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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 153.

THE BOARD OF THE COUNTY COMMISSIONERS OF THE COUNTY OF LARAMIE, APPELLANTS,

vs.

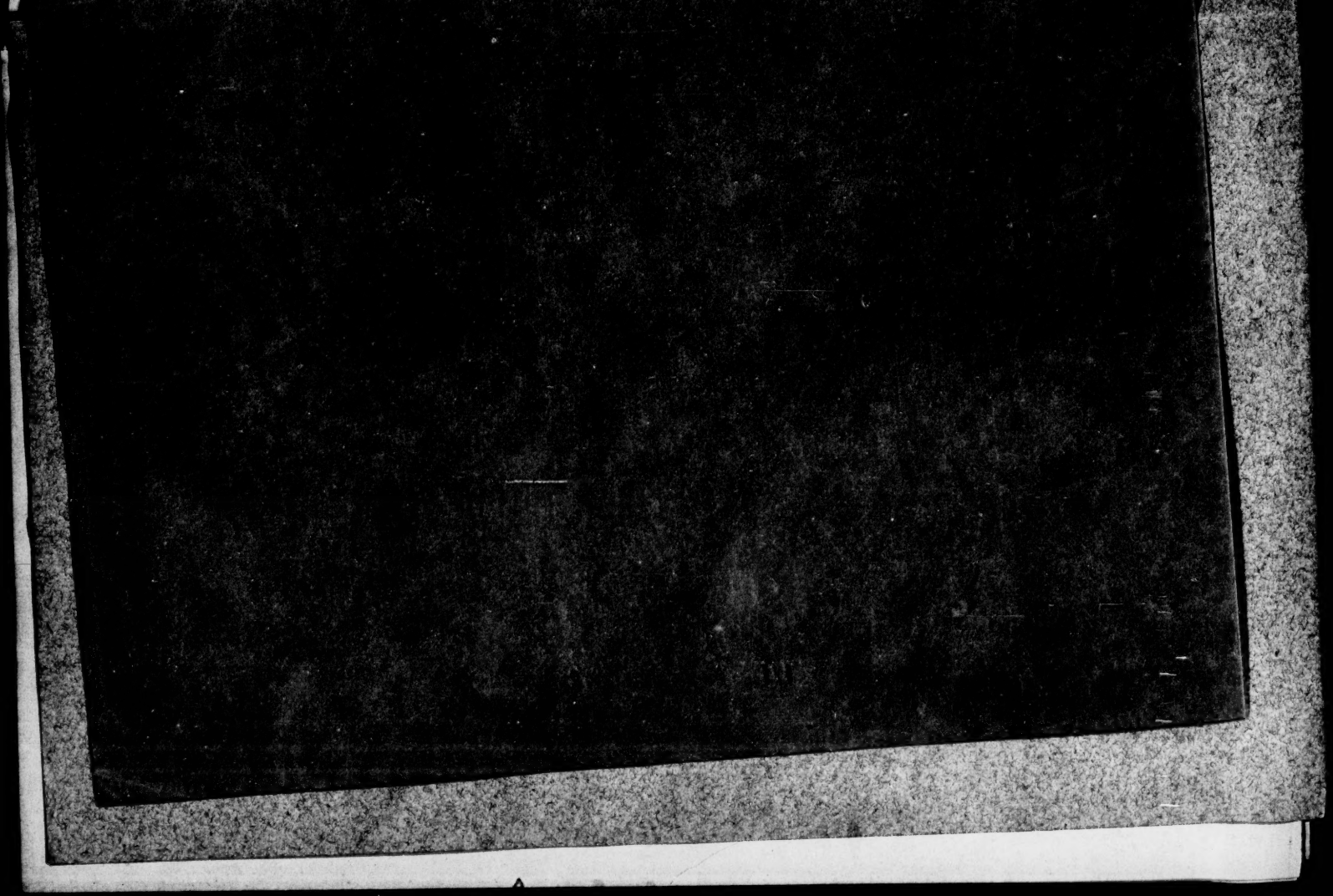
THE BOARD OF THE COUNTY COMMISSIONERS OF THE COUNTY OF ALBANY AND THE BOARD OF THE COUNTY COMMISSIONERS OF THE COUNTY OF CARBON.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF WYOMING.

FILED FEBRUARY 26, 1874.

12 Stat at Large 239

9 Harris 147



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1 Be it remembered that heretofore, to wit, on the 7th day of July, A. D. 1873, a transcript was filed in the office of the clerk of the supreme court of Wyoming Territory, in the words and figures following, to wit:

In district court, first judicial district, in chancery.

Bill of complaint.

BOARD OF COUNTY COMMISSIONERS OF THE county of Laramie
against
THE BOARD OF COUNTY COMMISSIONERS OF the county of Albany and the board of county commissioners of the county of Carbon.

2 To the honorable the judge of the district court of the first judicial district of the Territory of Wyoming, in and for the county of Laramie, in equity sitting:

The board of county commissioners of the county of Laramie, in said Territory of Wyoming, brings this its bill of complaint against the board of county commissioners of the county of Albany, in said Territory, and the board of county commissioners of the county of Carbon, in said Territory. And thereupon your orator complains and says that said county of Laramie is a citizen of the United States, and a corporation duely incorporated by virtue of an act of the legislative assembly of the Territory of Dakota, entitled "An act to create and organize the county of Laramie," passed at the sixth session, and approved by the governor of said Territory on the 9th day of January, 1867; to which said act your orator, for greater certainty, begs leave here to refere.

3 Your orator further showeth unto your honor that at the date last above mentioned said county of Laramie was a part of said Territory of Dakota; that thereafter, and while said county still continued to be a portion of said Territory of Dakota, it was duely reorganized by virtue of an act of the legislative assembly of said Dakota Territory, entitled "An act to reorganize the county of Laramie," passed at the seventh session, and approved by the governor of said Territory on the 3d day of January, 1868, to which said act your orator, for greater certainty, begs leave here to refere.

Your orator further showeth unto your honor that at the date of its reorganization as aforesaid the said county of Laramie, in said Territory of Dakota, embraced within its territorial limits all that territory now comprising the counties of Laramie, Albany, and Carbon, in the Territory of Wyoming, and being an area of three and one-half degrees from east to west and four degrees from north to south.

4 Your orator further showeth unto your honor that at the date of the reorganization of Laramie County, as aforesaid, and for several months before that time, the construction of the Union Pacific Railroad and telegraph lines was being carried on and being rapidly pushed towards completion from the eastern boundary of said Laramie County towards its western boundary, and was so completed, and about the number of two hundred and sixty miles of railroad and telegraph line was built by the Union Pacific Railroad Company between the east and west lines of said county of Laramie before the sixteenth day of December, 1868.

Your orator further showes unto your honor that said Union Pacific

Railroad Company also built along the line of its railroad, in said Laramie County, before said first day of December, 1868, a great number of valuable buildings, including railroad depots, warehouses, telegraphic stations, station-houses, hotels, round-houses, engine-houses, store-houses, and workshops, whose value was not less than five hundred thou-
5 sands dollars; that the road-bed was not of less value than six thousand dollars per mile, or about one million six hundred thousands for its entire length in said Laramie County.

Your orator further shows unto your honor that during the spring, summer, and fall months of said year 1868, a number of thrifty towns sprang up along the line of said railroad, prominent among which were the towns of Laramie, Wyoming, Carbon, Brownville, Benton, and Rawlins, which added very largely to the wealth of Laramie County, and most of which have become permanent in their character.

Your orator states upon information and belief, and so charges the fact to be, that the aggregate value of permanent improvements made during the said months, at the points named, was not less than two hundred and fifty thousand dollars; that prior to the reorganization of Laramie County, as aforesaid, the towns of Cheyenne, Sherman, and Dale Creek had sprang into existance; and your orator states on information
6 and belief, and so charges the fact to be, that the aggregate value of permanent improvements at the three last-named places, exclusive of the Union Pacific Railroad Company's property, on the 16th day of December, 1868, was not less than five hundred thousand dollars.

Your orator further shows unto your honor that during the summer and fall of 1868 large herds of cattle had accumulated on the Laramie plains, in what is now Albany County, of the value of seventy-five thousand dollars, as your orator is informed and believes, and so charges the fact to be, and that said herds have, from and since that time, been increasing in numbers and value. Your orator further shows unto your honor that during the year of 1868 valuable coal-mines were discovered and worked with great profit in the vicinity of Carbon, in what is now Carbon County; that your orator is informed and believes, and so charges the fact to be, that these coal-mines were of at least the value of fifty thousand dollars. Your orator further shows unto your honor,
7 upon its information and belief, and so charges the fact to be, that on the 16th day of December, 1868, there was in the said county of Laramie property, both real and personal, of the value of at least three millions of dollars, and that nearly all of the same was then and is now of a permanent character, and that all of said property was subject to assessment and levy of taxes under and by virtue of the laws of said Territory of Dakota for territorial, county, district-court, hospital, road, and bridge and school purposes.

Your orator further showeth unto your honor that the persons named as officers in the act creating and organizing the county of Laramie, approved January 9th, 1867, did not qualify nor enter upon the discharge of their duties of their respective offices; that, by reason of this failure and neglect to qualify and discharge official duties, the said county of Laramie remained in an inchoate condition until the month of January, 1868, at which time all the persons named as officers of said county in the act to reorganize the county of Laramie, approved
8 January 3d, 1868. duly qualified, and entered upon and discharged the duties of their respective offices, and continued to discharge the duties of their said offices, respectively, until their successors were duly elected and qualified.

Your orator further showeth unto your honor that at the date of the

reorganization of said county as aforesaid, and for some months prior to that time, the construction of the Union Pacific Railroad and telegraph lines, the building of its stations, warehouses, engine-houses, round-houses, depots, hotels, store-houses, and workshops, the building of the numerous towns along the line of said road as aforesaid, brought into the then limits of said county many thousands of persons, and including, as well as contractors, laborers, teamsters, mechanics of the various trades, artizans, engineers, merchants, traders, and professional men, outlaws of both sexes, convicted and unconvicted felons, desperadoes, criminals of high and low degree, and a legion of knaves, common cheats, and swindlers. That while the former classes were engaged in works of enterprise and industry and adding to their pivate gain and the wealth of saidcounty, the latter were engaged in violating the laws by numerous murders, robberies, larcenies, riots, and other breaches of the peace, and by various other kinds of outrages against law, order, and public decency, too numerous to mention, and tedious to mention in detail.

Your orator further states that this condition of society continued in said county from the date of its reorganization as aforesaid, gradually —"like the star of empire"—moving westward during the greater portion of the year 1868, until the latter part of that year, when it crossed its western boundary, and fell like a cloud of Egyptian locusts upon the adjoining county of Carter, in said Territory of Dakota, and the neighboring Territory of Utah.

Your orator further shows that this condition of society in said county, during the year 1868, made the police-court and hospital expenses of said county very large, amounting to many thousand dollars; that the distance from the county-seat to the western boundary of said county was over two hundred miles. The sheriff and his deputies and the constables of said county very frequently were required to go from the county-seat to the limits of said county to make arrests of persons charged with the commission of felonies and misdemeanors, and to do other acts required of them in the discharge of their official duties, the expenses of which were chargeable and were charged to the county of Laramie, and afterwards paid by said county.

That a very large portion of the arrests thus made were for violations of the laws committed in that portion of Laramie County that is now comprised in the said counties of Carbon and Albany; that often the persons so arrested as aforesaid were held in custody for trial at the district court at great expense to said county of Laramie, and amounting to many thousands of dollars; that the salaries of the county officers of said county of Laramie, the expenses for rent for county offices, fuel, lights, stationary, and other incidental expenses of said offices, amounting to many thousand dollars more—all of which was chargeable to and was charged to said county of Laramie, and which, since, has been paid by a small portion of the taxable property of the then county of Laramie.

Your orator further shows unto your honor that the taxable property in said county of Laramie, of about the value of three millions of dollars, was, at and before the organization of the counties of Albany and Carbon, as will be hereinafter more definitely stated, legally and equitably liable to pay by assessment and levy all of the indebtedness so incurred by said Laramie County, in preserving order, protecting persons and property in their rights, and giving to the community a fair degree of peace and sense of security, as herein alleged, and for all other kinds of liabilities necessary and legally incurred.

Your orator further shows unto your honor that after said county of Laramie had incurred vast liabilities in the manner aforesaid, before the creation and organization of the counties of Albany and Car-
12 bon, and amounting to nearly forty thousand dollars, the said counties of Albany and Carbon were organized out of the western portion of the county of Laramie, by virtue of two acts of the legislative assembly of said Territory of Dakota, entitled respectively "An act to organize the county of Albany" and "An act to organize the county of Carbon," both passed at its eight' session, and approved by the governor of said Territory on the 16th day of December, 1868, to which said acts your orator, for greater certainty, here begs leave to refer.

Your orator further shows unto your honor that no provisions were made in either of said acts creating said counties of Albany and Carbon for each of said counties to assume its just proportion of the debts and liabilities existing at the date of its creation against the county of Laramie, and which were incurred by the county of Laramie, in the manner hereinbefore stated, for the common welfare of all per-
13 sons and property within its limits. That, by said acts creating said counties of Albany and Carbon, fully two-thirds of the wea'th and taxable property existing in said county of Laramie were withdrawn from its jurisdiction, and its limits reduced geographically to less than one-third of its former size; and the whole of all the debts and liabilities of the original county were imposed upon the present county of Laramie, which has had to pay all of such debts and liabilities.

Your orator further shows unto your honor that, from the date of its organization until the creation of the counties of Albany and Carbon, the county of Laramie received from all sources of revenue only about the sum of twelve thousand dollars; thus leaving the actual indebtedness at the date of the creation of these two counties about the sum of twenty-eight thousand dollars. That the present county of Laramie has been compelled, in order to pay off and discharge this indebtedness, incurred as aforesaid, for the three years last past, to assess, levy, and
14 collect onerous and burdensome taxes on the wealth and property of its citizens.

Your orator further shows unto your honor that each of said counties of Albany and Carbon are justly liable to your orator for its proportionate share of the indebtedness so paid off by Laramie County, as aforesaid, in the proportion of the amount of permanent assessable property withdrawn from the jurisdiction of Laramie County to the whole debt of said county at the date of withdrawal, less the amount of revenue collected from all sources.

And your orator had well hoped that said Albany County and said Carbon County would have paid to said Laramie County each its just and fair proportion of the said debt and liability so paid as aforesaid by said Laramie County, as in truth *and* each should do. But now so it is, may it please your honor, that the said defendants, and each of them, refuse to pay any portion of said indebtedness so paid off and discharged by said county of Laramie, and sometimes pretend there
15 is no liability on their part to pay to your orator or the county of Laramie any portion of the indebtedness of said Laramie County created prior to the organization of said counties of Albany and Carbon, and which has been paid off and discharged by said county of Laramie. All of which refusals and pretences are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator in the premises.

In consideration whereof, and forasmuch as your orator is remediless at and by the strict rules of the law, and cannot have adequate relief and redress save in a court of equity, where matters of this and like nature are properly cognizable and relievable,

To the end, therefore, that said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may upon their respective knowledge, remembrance, information, and belief full and direct and perfect answers make to such of the several
16 interrogatories hereino*ften* mentioned and set fo*u*rth as by the note herein underwritten they are respectively required to answer; that is to say:

Whether it is not a fact that the county of Laramie was created and organized by an act of the sixth session of the legislative assembly of the Territory of Dakota, and reorganized by an act of the seventh session of the legislative assembly of the Territory of Dakota, as stated in this bill; and, if nay, how is the contrary to be made out; and how otherwise should the fact be stated to have taken place; and for what other purpose were the two acts of said sixth and seventh sessions of the legislative assembly of said Territory of Dakota enacted? Exhibits A and B, hereto annexed, are referred to as copies of the said two acts.

2. Whether it is not a fact that said Laramie County, at the date of its reorganization, on the 3d day of January, 1868, and until the
17 16th day of December following, did embrace and contain within its limits all the territory included in the counties of Laramie, Albany, and Carbon, as stated in this bill; and, if nay, how is the contrary to be made out, and how otherwise should the fact be stated to have existed at that time?

3. Whether it is not a fact that at the date of the reorganization of Laramie County, to wit, January 3d, 1868, and for some months prior thereto, the Union Pacific Railroad and telegraph lines were being built from the eastern towards the western boundary of said county; and, if nay, how is the contrary to be made out; and how should the fact be otherwise stated?

4. Whether it is not a fact that said Union Pacific Railroad and telegraph lines were completed from the eastern to the western boundary of said county, about the distance of two hundred and sixty
18 miles, before the 16th day of December, 1868; and, if nay, how should the fact be otherwise stated, and how should the truth be made to appear?

5. Whether it is not a fact that said railroad and telegraph lines were of at least the value of six thousand dollars per mile; and, if nay, how is the contrary to be made out, and how otherwise should the fact be stated?

6. Whether it is not a fact that, prior to the 16th day of December, 1868, the Union Pacific Railroad Company built along the line of its railroad, in the county of Laramie, a great number of valuable buildings, such as depots, stations, warehouses, round-houses, engine-houses, store-houses, workshops, and hotels, of at least *of* the value of five hundred thousand dollars; and, if nay, how is the contrary to be made out; and how otherwise should the facts be stated?

19 7. Whether it is not the fact that, prior to the 16th day of December, 1868, a number of towns were built along the line of the Union Pacific Railroad, in said county of Laramie, that were permanent in their character, and possessing taxable property exclusive of the Union Pacific Railroad Company's property, of at least the value of seven hundred thousand dollars; and, if nay, how with truth is the con-

trary to be made out, how otherwise should the facts be stated, and what exception should be made, if any exist?

8. Whether it is not the fact that, prior to the 16th day of December, 1868, large and valuable herds of cattle had been accumulated on the Laramie Plains, in what is now Albany County, of, at least, *of* the value of seventy-five thousand dollars; and, if nay, how with truth is the contrary to be made out; and how otherwise should the fact be stated?

9. Whether it is not the fact that, prior to the 16th day of De-
20 cember, 1868, valuable coal-mines were discovered and worked in the vicinity of Carbon, in what is now Carbon County, of at least *of* the value of fifty thousand dollars; and, if nay, how with truth is the contrary to be made out, and how otherwise should the fact be stated?

10. Whether it is not the fact that, on and prior to the 16th day of December, 1868, before the creation and organization of the counties of Albany and Carbon, there was property in the county of Laramie, permanent in character, of at least *of* the value of three millions of dollars, which was legally and equitably liable to assessment and levy of taxes to discharge and pay off the indebtedness incurred by said Laramie County in protecting the same; and, if nay, how with truth is the contrary to be made out, and what exceptions should be made, if any exist?

11. Whether it is not a fact that, prior to the 16th day of De-
21 cember, 1868, and before the creation and organization of the counties of Albany and Carbon, *that* officers of Laramie County, in the lawful discharge of their official duties, in that portion of said Laramie County now embraced within and known as the counties of Albany and Carbon, did incur debts and liabilities against said Laramie County, amounting to many thousands of dollars over and above the revenue received; and, if nay, how with truth is the contrary to be made out, and how otherwise should the fact be stated?

12. Whether it is not the fact that the present county of Laramie, after being reduced to less than one-third of its original size, and having fully two-thirds of its wealth and taxable property taken out of its jurisdiction by the two acts creating and organizing the counties of Albany and Carbon, has not been compelled to pay all of the indebtedness incurred during the year 1868, in preserving order, affording protection to persons and property, and in punishing offences against the
22 laws of Dakota Territory in that portion of Laramie County now known as the counties of Albany and Carbon; and, if nay, how, with truth, is the contrary to be made out; and how otherwise should the fact be stated?

13. Whether it is not the fact that the counties of Albany and Carbon have not paid, and neglect and refuse to pay, their just and equitable portion of the expenses of the county of Laramie, incurred during the year 1868; and, if nay, how, with truth, is the contrary to be made out; and how otherwise should the fact be stated?

14. Whether it is not the fact that, after the indebtedness and liabilities hereinbefore mentioned had been incurred by Laramie County, *that* by the two acts creating and organizing the counties of Albany and Carbon fully two-thirds of the wealth and taxable property of said Laramie County was withdrawn from its jurisdiction and control; and, if nay, how, with truth, is the contrary to be made out; and how otherwise should the fact he stated?

23 (Exhibits C and D, hereto annexed, are referred to as copies of said acts.)

15. Whether it is a fact that during the year 1868, and prior to the

creation and organization of the counties of Albany and Carbon, there was a large number of lawless and desperate characters in what is now known as Albany and Carbon Counties, along the line of the Union Pacific Railroad, and that a great portion of the indebtedness incurred by *the* Laramie County in 1868 was incurred by the officers of said Laramie County in making arrests of persons charged with violation of laws, paying fees and mileage to county officers for making such arrests in these portions of Laramie County now known as Albany and Carbon Counties; in transporting such prisoners to the county-seat; in keeping and maintaining such prisoners; in paying expenses of the courts and juries in the examination and trial of such prisoners; and, if nay, how, with truth, is the contrary to be made out; and how should the facts be otherwise stated?

24 16. Whether it is not a fact that a large portion of the indebtedness of said Laramie County incurred in 1868 arose from keeping an hospital in said county which maintained the indigent sick and paupers from all parts of said county; and, if nay, how, with truth, should the fact be stated; and how should the contrary be made to appear?

And your orator prays that each of said defendants, upon being served with subpœna, may answer the premises; and that all accounts of all the expenses of said Laramie County in 1868, and prior to the creation and organization of said counties of Albany and Carbon, may be taken by the order of this court, together with an account of all the revenues received by said Laramie County during the same time; that a statement of the assessable property of each of said counties of Albany and Carbon at the time of their creation and organization, and the value of the same, may be set forth in a list or schedule by each of said

25 defendants, and deposited in this honorable court for the use of your orator and all other persons interested in the same; that the proportion of the debt and liabilities incurred by Laramie County in 1868 which each of said counties should fairly and equitably pay may be fixed and determined by this court, and that the amount which each of said defendants shall pay to your orator may be adjudged by your honor; and that your orator may have such orders, decrees, and process as may be necessary to enforce the payment of such sum of money as may be adjudged and found due to your orator from each of said defendants, and for such other and further relief as to this honorable court shall seem just and equitable.

May it please your honor to grant unto your orator a writ of subpœna, to be directed to the "Board of county commissioners of the counties of Albany and the board of county commissioners of the counties

26 of Carbon," thereby commanding them and each of them, at a certain time, and under certain penalties therein to be expressed, to personally appear before this honorable court, and then and there full, true, direct, and perfect answers make to all and singular the premises, and further to stand to, perform, and abide such further orders, directions, and decrees therein as this honorable court shall seem meet.

(Signed) DANIEL McLAUGHLIN,
Solicitor for Complainant,
And J. W. COOK,
Prosecuting Attorney for Laramie County.

27 NOTE.—The defendant, The board of county commissioners of Albany County, is required to answer the interrogatories numbered respectively 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, and 16.

The defendant, The board of county commissioners of Carbon County, is required to answer the interrogatories numbered respectively 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, and 16.

28 EXHIBIT A.

A.—An act to create and establish the county of Laramie.

Be it enacted by the legislative assembly of the Territory of Dakota:

SECTION. 1. That all that portion of the Territory of Dakota west of the one hundred and fourth meridian west, be, and the same is hereby, created into a county by the name of Laramie, and the following officers are hereby appointed for said county to act until the next ensuing general election:

County commissioners, W. L. Kuykendall, Philip Mandle, William L. Hopkins.

Sheriff, Robert Foot.

Judge of probate, Geo. Wilson, jr.

Register of deeds, James C. Lehmer.

29 Justic' of the peace, Robert Tate.

Constable, Frank Ernest.

Coroner, B. J. Walters.

SECTION 2. The governor may appoint as many notaries public as he may deem necessary.

SECTION 3. The county-seat of said counties is hereby located at Fort Sanders, and said counties shall be entitled to one representative in the legislative assembly until otherwise provided by the legislative assembly.

SECTION 4. This act shall take effect and be in force from and after its passage.

Approved January 9th, 1867.

(6th session legislative assembly, Laws of Dakota Territory, 1866–'7, pp. 43.)

30 EXHIBIT B.

B.—An act to reorganize the county of Laramie.

Be it enacted by the legislative assembly of the Territory of Dakota:

SECTION 1. That chapter of the session-laws of 1866–'67, entitled "An act to create and establish the county of Laramie," approved January 9th, 1867, be, and the same is hereby, repealed; and all elections held, or pretended to be held, under and by virtue of said act, *is* hereby declared null and void, and shall be held for naught.

SECTION 2. That all that portion of the Territory of Dakota west of the one hundred and fourth meridian west, and east the one hundred and seventh degree and thirty minutes west, be, and the same is hereby, created into a county by the name of Laramie; and the following officers are hereby appointed for said county, to act until the next

31 ensuing general election, and until their successors are duly elected and qualified:

County commissioners, Benjamin Ellinger, Boger F. Beall, and Patrick McDonald.

Sheriff, J. L. Laird.

Judge of probate, Wm. L. Kuykendall.
Register of deeds, William Morris.
Justices of the peace, N. J. Bond, A. B. Mone, and Lewis Loweril.
Constable, James Masterson.
Coroner, F. W. Johnson.
County superintendent of public instruction, J. H. Gildersleave.
Surveyor, S. W. Winsor.
District attorney, Ed. P. Johnson.

32 SECTION 3. The county commissioners may all vacancies in county offices, and the persons so appointed shall hold their respective offices until the next general election, and until their successors are duly elected and qualified.

SECTION 4. The governor may appoint as many notaries public for said county as he may deem necessary.

SECTION 5. The county-seat of said county is hereby located at the city of Cheyenne.

SECTION 6. Until otherwise provided by laws, said county shall be entitled to one member of the house of representatives of the legislative assembly.

SECTION 7. This act shall take effect and be in force from and after its passage *approval.*

Approved January 3d, 1868.

(Seventh session legislative assembly, Laws Dakota Territory, 1867–'68, *pp.* 123.)

33 EXHIBIT C.

C.—An act to organize the county of Albany.

Be it enacted by the legislative assembly of the Territory of Dakota:

SECTION 1. That all that portion of Dakota Territory embraced within the following-described boundaries shall be known as the county of Albany, to wit: Commencing at Buford Station, on the Union Pacific Railroad; thence due north the forty-fifth parallel of north latitude; thence west along said parallel to the one hundred and seventh degree and thirty minutes west longitude; thence south, along said parallel, to a point due south of Buford Station; and thence north to the point of beginning; and the following officers are hereby appointed for said county to act until the next ensueing general election, and until their successors are duly elected and qualified:

34 County commissioners, J. W. Collins, Fred. Laycock, and T. J. Bath.
Sheriff, Thomas D. Sears.
Probate judge, M. C. Page.
Register of deeds, A. W. McClearn.
Justices of the peace, N. F. Weller, J. C. Walter, B. F. Green, and H. C. Hall.
Constables, S. Orsborn, Samuel Douglas, A. Frabing, and E. Carter.
Coroner, J. H. Frenfrock.
County superintendent of public instruction, Geo. W. Lancaster.
Surveyor, H. H. Richards.
District attorney, E. S. Kern.

35 SECTION 2. The county commissioners may fill all vacancies in county offices, and the persons so appointed shall hold their offices until the next general ensueing election, and until their successors are duly elected and qualified.

SECTION 3. The governor may appoint as many notaries public for said county as he may deem necessary.

SECTION 4. The county-seat of said county is hereby located at Laramie City.

SECTION 5. The county commissioners of said county shall have the power at any regular meeting of the board to make an order increasing the fees of county officers; provided, however, that the fees of said officers shall not be increased more than three times what is now allowed by law.

SECTION 6. This act shall take effect and be in force from and after its passage and approval.

36 Approved December 16th, 1868.

(Eight' session legislative assembly, Laws of Dakota Territory, 1868–'69, *pp.* 311.)

EXHIBITS D.

D.—An act to organize the county of Carbon.

Be it enacted by the legislative assembly of the Territory of Dakota:

SECTION 1. That all that portion of Dakota Territory embraced within following-described boundaries shall be known as the county of Carbon, to wit: Commencing Como Station, on the Union Pacific Railroad; thence due north to the forty-fifth parallel of north latitude; thence west, along said parallel, to the one hundred and seventh degree and thirty minutes west longitude; thence south, along the eastern boundary of Carter County, to the forty-second parallel of north latitude; thence east, along said parallel, to a point due south of

37 Como Station; and thence due north to place of beginning. And the following officers are hereby appointed for said county to act until the next ensueing general election and until their successors are duly elected and qualified:

County commissioners, John C. Dyer, G. Frazer, and S. M. Burr.

Sheriff, John Gurrell.

Probate judge, Francis B. Edwards.

Constables, George Board and M. E. Meetcalf.

District attorney, L. P. Correy.

SECTION 2. The county commissioners may appoint officers to fill the various county offices existing under the general laws of the Territory which are not herein provided for, and fill all vacancies in county offices; and the persons so appointed shall hold their respective offices until the next general ensueing election, and until their successors are

38 duly elected and qualified.

SECTION 3. The governor may appoint as many notaries public as he may deem necessary for said county.

SECTION 4. The county-seat of said county is hereby located at Rawlins Springs.

SECTION 5. The county commissioners of said county shall have the power, at any regular meeting of the board, to make an order increasing the fees of county officers; provided, however, that the fees of said officers shall not exceed three times what is now allowed by law.

SECTION 6. This act shall take effect and be in force from and after its passage.

Approved December 16th, 1868.

(Eighth session of the legislative assembly, Laws of Dakota Territory, 1868–'69, *pp.* 320.)

39 (Endorsed on the back as follows:) Filed May 13th, 1872. J. W. Bruner, clerk district court. Filed July 31st, 1872. J. W. Bruner, register in chancery, by L. D. Peas, deputy register.

And on July 31st, A. D. 1872, there were two subpœnas issued, in the words and figures following, to wit:

TERRITORY OF WYOMING,
County of Albany, ss:

To the board of county commissioners of the county of Albany and the board of county commissioners of the county of Carbon:

We command you and each of you, in the name of the Territory of Wyoming, that on the third Monday after the date of the return hereof, to wit, on the second day of September, 1872, laying all other
40 matters and excuses aside, you do cause an appearance to be entered for you in our court of chancery to a bill filed against you by the board of county commissioners of the county of Laramie, and that you do answer concerning such matters as are therein alleged against you. And if you shall fail to appear and answer within the time hereinbefore required after service of this subpœna upon you, your default will be entered and the said bill will be taken as confessed and true, and a decree rendered accordingly. Returnable on the twel'th day of August, 1872.

Witness my hand and the seal of our said court, hereto attached, this 31st day of July, 1872.

TERRITORY OF WYOMING,
FIRST DISTRICT COURT,
ALBANY COUNTY.

J. W. BRUNER,
Register in Chancery,
By L. D. PEASE,
Deputy Register.

TERRITORY OF WYOMING,
County of Albany, ss:

I hereby certify that I received the within subpœna in chancery on the 31st day of July, 1872, at 5 o'clock p. m., and served the same
41 at Albany County, aforesaid, on the 5 day of August, 1872, by delivering a copy thereof to Charles Buzsard, chairman board county commissioners of Albany County, W. T., said copy not being certified to be a copy.

N. K. BOSWELL,
Sheriff of Albany County.

Filed August 6th, 1872. J. W. Bruner, register, by L. D. Pease, deputy.

TERRITORY OF WYOMING,
County of Albany, ss:

To the board of county commissioners of the county of Albany and the board of county commissioners of the county of Carbon:

We command you and each of you, in the name of the Territory of Wyoming, that on the third Monday after the date of the return hereof, to wit, on the second day of September, 1872, laying all other matters and excuses aside, you do cause an appearance to be entered for you in our court of chancery to a bill filed against you by
42 the board of county commissioners of the county of Laramie, and that you do answer concerning such matters as are therein

alleged against you; and if you shall fail to appear and answer within the time hereinbefore required after service of this subpœna upon you, your default will be entered, and the said bill will be taken as confessed and true, and a decree rendered accordingly, returnable on the twelfth day of August, 1872.

Witness my hand and the seal of our said court, hereto attached, this 31st day of July, A. D. 1872.

WYOMING TERRITORY, FIRST DISTRICT COURT, ALBANY COUNTY.

J. W. BRUNER,
Register in Chancery,
By L. D. PEASE,
Deputy Register.

TERRITORY OF WYOMING,
County of Carbon, ss:

I hereby certify that I received the within subpœna in chancery on the 9th day of August, 1872, at 3 o'clock p. m., and served the same at Carbon County aforesaid, on the 9th day of August, 1872, by
43 delivering a certified copy thereof to Frank Bloche, chairman board of county commissioners of Carbon County, Wyoming Territory.

Done at Rawlins Springs, in Carbon County, W. T.
Returned August 9th, 1872.

P. LEMON,
Sheriff of Carbon County.

Filed August 10th, 1872. J. W. Bruner, register, by L. D. Pease, deputy.

And thereupon, on September 16th, 1872, there was filed in the clerk's office a demurrer, in words and figures as follows, to wit:

TERRITORY OF WYOMING,
County of Albany, ss:

In district court, first judicial district.

THE BOARD OF THE COUNTY COMMISSIONERS of the county of Laramie, complainent,
versus
THE BOARD OF THE COUNTY COMMIS-
44 sioners of the county of Albany and the board of the county commissioners of the county of Carbon, defendants.
In chancery.

The demurrer of the board of the county commissioners of the county of Carbon, one of the defendants, to the bill of complaint of the board of county commissioners of the county of Laramie, complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill to be true in such manner and form as the same are therein set fourth and alleged, doth demur thereto, and for cause of demurrer showeth—

That the said complainant hath not in and by its said bill made or stated such a case as doth or ought to entitle it to any such discovery or relief as is thereby sought and prayed for from or against this defendant.

45 Wherefore this defendant demands the judgment of this honorable court whether it shall be compelled to make any further or other answer to the said bill or any of the matters or things therein contained, and prays to be hence dismissed, with its reasonable costs in this behalf sustained.

BOARD OF THE COUNTY COMMISSIONERS OF THE
COUNTY OF CARBON,
Defendant.

W. W. CORLETT,
Solicitor, &c.

(Endorsed on the back as follows:) Demurrer. Filed Sept. 16th, 1872. J. W. Bruner, register, by J. W. Meldrum, deputy.

TERRITORY OF WYOMING, *County of Albany, ss:*

In the district court, first *d*udicial district.

46	THE BOARD OF COUNTY COMMISSIONERS OF the county of Laramie, complainant, *versus* THE BOARD OF COUNTY COMMISSIONERS OF THE county of Albany and the board of county commissioners of the county of Carbon, defendants.	In chancery.

The demurrer of the board of county commissioners of the county of Albany, one of the defendants, to the bill of complaint of the board of county commissioners of the county of Laramie, complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill to be true in such manner and form as the same are therein set forth and alleged, doth demur thereto, and for cause of demurrer showeth, that the said complainant hath not, in and by its said bill, made or stated such a case as doth or ought to entitle it to any such discovery or relief as is
47 thereby sought and prayed for from or against this defendant.

Wherefore this defendant demands the judgment of this honorable court whether it shall be compelled to make any further or other answer to the said bill, or any of the matters and things therein contained, and prays to be hence dismissed with its reasonable costs in this behalf sustained.

BOARD OF COUNTY COMMISSIONERS OF THE
COUNTY OF ALBANY,
Defendant.

STEPHEN W. DOWNEY,
County Attorney for Albany County, Solicitor, &c.

(Endorsed on the back as follows:) Demurrer. Filed Sept. 26th, 1872. J. W. Bruner, register, by J. W. Meldrum, deputy.

48 And thereupon, on the 13th day of March, A. D. 1873, the following journal-entry was made, as follows, to wit:

And now, on this 13th day of March, A. D. 1873, this cause coming on to be heard upon the demurrers of the board of the county commissioners of Albany County and the board of the county commissioners the county of Carbon, the defendants herein, to the bill of complaint

of the board of the county commissioners of the county of Laramie, complainant herein, and after argument by counsel, it is considered, ordered, adjudged, and decreed, that the said demurrers be sustained, and that the bill of complaint herein be dismissed. To all of which said ruling, order, and judgment of the court, sustaining said demurrers of said defendants, the said complainants, by counsel, then and there excepted, and prayed that said exception in that behalf might be allowed; all which is so done accordingly.

49 And thereafter the following notice of appeal was filed, as follows, to wit:

TERRITORY OF WYOMING,
County of Albany, ss:

In the district court of the first judicial district, in chancery sitting.

THE BOARD OF THE COUNTY COMMISSIONERS of the county of Laramie
against
THE BOARD OF THE COUNTY COMMISSIONERS of the county of Albany and the board of the county commissioners of the county of Carbon.

Notice of appeal.

To the register in chancery of said court:

You will take notice the board of the county commissioners of the county of Laramie appeal from the ruling, order, judgment, and decree heretofore rendered in this cause by the district court aforesaid in sustaining the demurrers of the said "The board of the county
50 commissioners of the county of Albany," and the board of the county commissioners of the county of Carbon, to the bill of complaint herein of the said the board of the county commissioners of the county of Laramie.

Said appeal being taken to the supreme court of the Territory of Wyoming.

And you will please certify the entire record in said cause to said supreme court.

DANIEL McLAUGHLIN,
Complainant's Solicitor,
By STEELE.

(Endorced on the back as follows:) Filed April 11th, 1873. J. W. Bruner, register, by J. W. Meldrum, deputy.

And on the 7th of July, 1873, the foregoing cause was filed in the supreme court of Wyoming Territory.

(Endorsed on the back as follows:) The board of the county commissioners of Laramie County vs. The board of county commissioners of Albany & Carbon Counties. Filed July 7th, 1873. J. W. Bruner, clerk S. C.

51 And at our regular July term, 1873, of the said supreme court of Wyoming Territory, the following order was made, as follows, to wit:

July term, 1873. Monday, July 21st, 1873.

THE BOARD OF THE COUNTY COMMISSIONERS of the county of Laramie, complainant,
vs.
THE BOARD OF THE COUNTY COMMISSIONERS of the county of Albany and the board of the county commissioners of the county of Carbon, defendants.

It is now considered and adjudged by the court that the decision of the court below be, and is hereby, in all respects affirmed in its rulings in this cause; to which decision and ruling of this court the appellant, The county commissioners of Laramie County, then and there excepted.

J. W. FISHER,
Chief-Justice Wyoming Territory.

52 And thereupon the following opinion was filed in the clerk's office of the supreme court of Wyoming Territory, as follows, to wit:

TERRITORY OF WYOMING:

In supreme court.

53 THE BOARD OF THE COUNTY COMMISSIONERS of the county of Laramie
vs.
THE BOARD OF THE COUNTY COMMISSIONERS of the county of Albany and the board of the county commissioners of the county of Carbon. } In chancery.

Appeal from the judgment and decree of the district court of the first judicial district sustaining the demurrers of the defendants herein to the said plaintiff's bill of complaint:

An act was passed by the legislative assembly of the Territory of Dakota, and approved January 9th, 1867, by the governor of said Territory, to create and organize the county of Laramie, and subsequently said legislative assembly passed an act to re-organize said county of Laramie, which was approved by the governor of Dakota on the 3d day of January, 1868. Said county, as re-organized, comprised that portion of said Territory which now forms the counties of Laramie, Albany, and Carbon, in the Territory of Wyoming. By the last-named act the city of Cheyenne, in the present county of Laramie, was
54 designated as the county-seat. At the time of such re-organization, for several months after, and until December 16th, 1868, the Union Pacific R. R. Company was constructing its road and telegraph lines through the southern part of said county of Laramie for a distance of about 260 miles from the eastern to the western limits thereof. And said company erected along the line of said railroad a large number of valuable buildings, including depots, warehouses, telegraph-stations, station-houses, hotels, round-houses, engine-houses, and workshops, estimated in said complaint at the value of $500,000, the like estimate of the value of such railroad in Laramie County being $1,600,000.

The complainant further alleges that, during the spring and summer

of 1868, a number of towns and villages were built along the line of said railroad, and that the value of permanent improvements during the time last mentioned was, at least, $250,000, and that at the time of the re-organization of said county, as aforesaid, the aggregate value of permanent improvements in the towns of Cheyenne, Sherman,
55 and Dale Creek, in said county of Laramie, was not less than $500,000.

It is further alleged that, in the summer of 1868, large herds of cattle, of the estimated value of $75,000, were brought upon Laramie plains, now in Albany County, and that the same have since been increasing in numbers and value; and that, at about the same time, coal-mines of considerable value were discovered and worked in what is now Carbon County; that, on the 16th day of December, 1868, the value of property of a permanent nature in the entire county of Laramie was of the value of $3,000,000, subject to assessment. It is further shown that the persons named as officers in the act organizing Laramie County failed to qualify, and by reason thereof the interests and affairs of said county were neglected until January, 1868, when the officers named in the act re-organizing said county qualified and entered upon the discharge of the duties of their respective offices until their successors were duly elected and qualified.

The complainant also states that, at the time of the construc-
56 tion of the Union Pacific Railroad, in addition to the workmen and other employees of said company who came within the limits of Laramie County for the purpose of constructing said railroad, and the buildings and telegraph-lines of said company, a great number of felons and other criminals infested the entire country through which the railroad was then being built, committing a large number of crimes and depredations, thereby rendering the employment of numerous peace-officers necessary, which, in addition to court, hospital, and other expenses arising therefrom, made a heavy expenditure necessary by said county, which expenses, with the salaries, fees, and disbursements of the county officers for the year 1868, were, it is claimed, subsequently paid by that portion of the county only which now forms Laramie County, except the sum of $12,000 assessed upon and paid in 1868 by the entire county as originally organized. It is further claimed by the plaintiff that the full amount of such expenditures was about $40,000, leaving a balance of $28,000, for a contribution towards the pay-
57 ment of which last-named sum by the counties of Albany and Carbon this action is brought. It is further shown by the acts of the Dakota legislature above referred to that no provisions were made by the same for the payment of such indebtedness.

To the bill of complaint both of the defendants severally demurred or the reason—

That the said complainant did not, in and by its said bill, make or state such a case as did or ought to entitle it to any such discovery or relief as is thereby sought and prayed for from or against the defendant, which said demurrers were sustained by the district court, and an appeal is brought to this court from such decision.

Messrs. McLaughlin and Steel, for the plaintiff, cite:

Laws of Wyoming, pp. 146-'7, 1869

Laws of Dakota, 1868.

" " Wyoming, p. 707, 1869.

2 Kent, pp. 331, 332, 333.

Cooley's Constitutional Limitations, pp. 488, 504.

Vattel's Law of Nations, pp.

58 21 Penn. St., p. 107.
Wafad, Henger, 8 Iowa, (Chark,) p. 82.
Angel & Ames on Copartnership, p. 1 to 20.
Dillon on Municipal", sec. 10, pp. 30 to 42 & 55.
Dillon's Cir. Ct. Rep., p. 130.
5 Ohio St., p. 496.
8 Iowa, p. 92.
3 " p. 604.
Story's Eq. Juris., chap. 1.
1 " " " sec. 64.
" " " " sec. 469 to 505.
10 Mass., p. 384.
2 Sargent & Rawle, p. 117.
27 Penn., p. 107.

Messrs. Corlett and Bramell, for the defendants, cite:

16 Mass., p. 76.
52 Penn., p. 374.
4 Mass., p. 390.
31 N. Y. p. 164.
2 Wendall, (N. Y.,) p. 109.
11 Ohio, p. 96.
6 Cushing, p. 575 to 578.
15 Mass., p. 197.
8 Iowa, p. 82.
16 Mass., p. 16.
Cooley's Constitution. Lim., p. 189 et seq.
Do. p. 488.
59 16 Mass., p. 76.
12 La., p. 515.
Dillon on Municipal Cor., secs. 30 et seq.
3 Howard, p. 534.
8 Ohio State, p. 285.
10 Howard, pp. 511 to 541.
4 Gray, p. 250.

THOMAS, J.:

The rule appears to be well established that, upon the state of facts set forth in the complainant's bill, where a county has been divided by an act of a legislature, one portion thereof retains the former name, county-seat, county-organization, county-buildings, and all other county-property, and the other portion being formed into new counties, that the county retaining such name and organization is responsible and liable solely for the entire indebtedness of the county at the time of such division, and cannot bring an action for contribution against the counties so set off, unless especially authorized so to do by an act or provision of the legislature making such division; that such legislature
60 is empowered to make a division upon such terms and conditions in reference to the payment of any indebtedness then accrued as it may deem proper, and that even a court of equity cannot interfere in the matter except in the case of a special provision as above mentioned. I am further of the opinion that, even if the foregoing rule did not hold good, *that* the complainant herein can have no relief in chancery. From the very nature and condition of affairs set forth in the complaint, it appears that it would be impossible to obtain equitable relief, or that a court or master in chancery could arrive at any just computation

of the amount that would be due from the defendants or either of them to the complainant. It appears from the complaint that quite a portion of the original indebtedness has been paid by taxes assessed upon the western portion of the former county of Laramie; but it does not appear from the showing of the complaint that it is in the power of the complainant, or that there are any means whatever
61 to prove either the just proportion of the taxes already paid by the counties of Albany and Carbon, or the amount of property existing in December, 1868, in that portion of Laramie County now forming Albany and Carbon. On the contrary, it rather appears by the statements of the complainant that, from the vague and indefinite condition in which the affairs of Laramie County then were, and the property contained therein has since continued to be, *that* an equitable adjudication of the case could not be obtained. It appears that the western portions of the county had, up to December, 1868, paid their taxes according to the assessments then made by the officers of Laramie County, and it is to be presumed that such assessments were correct, at least far more so than any which could be arrived at at this late day.

The complaint states that during the year 1868 the officers of Laramie County had qualified, entered upon, and were disharging the duties
62 of their offices, and the inference certainly is that they performed their duties in a just and equitable manner, that the assessment for that year was as correct as could, under the circumstances, be made, and that the amount of taxes then paid by that portion of said county now forming Albany and Carbon was the equitable proportion of those counties. If equity is to be administered, it should certainly be administered strictly, and while it cannot be denied that any one bringing taxable property into or settling within a county becomes to an extent responsible for its liabilities, yet in the inchoate condition of affairs in Laramie County in December, 1868, and from the continual change which has since then taken place in property and the ownership thereof in the counties of Albany and Carbon, I am unable to perceive that it would be any more equitable to compel the present inhabitants of these last-named counties to contribute to the former indebtedness of Laramie County, and from which indebtedness the greater portion of such
63 present inhabitants derived no benefit whatever, than to leave said indebtedness as it now is, already paid by the inhabitants of Laramie County, who certainly derived by far the greatest advantages from the above-mentioned expenditures, and paid some time since by those inhabitants of Laramie County, apparently who had a more direct interest in the affairs of Laramie County when such indebtedness accrued than either the present inhabitants and property-owners of Laramie County, or of Albany and Carbon Counties.

While it is true that their seperate quasi corporations (parties to this suit) have since continued the same, it is equally certain that the inhabitants, property, and property-owners thereof have greatly changed, and in a matter of right or equity I think we should regard the real justice in the case. The decision of the district court, therefore, sustaining the demurrers of the defendants, is approved, and such decision is affirmed.

(Endorced on the back as follows:) Opinion. Filed Dec. 9th, 1873. J. W. Bruner, clerk S. C.

64 And on December 20*nd*, 1873, the following affidavit of amount of subject-matter in controversy was filed, to wit:

TERRITORY OF WYOMING:

In supreme court, July term, 1873.

THE BOARD OF COUNTY COMMISSIONERS OF the county of Laramie, complainant,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF the county of Albany and the board of county commissioners of the county of Carbon, defendants.

TERRITORY OF WYOMING,
County of Laramie, ss:

Daniel McLaughlin, being first duly sworn, deposes and says that he is the solicitor for complainant in the above-entitled cause; that the appeal to the Supreme Court of the United States from the order and judgment of the supreme court of the Territory of Wyoming in
65 said cause is taken in good faith; and that the matter in controversy exceeds the sum of one thousand dollars; that is to say, about two-thirds of the sum of seventeen thousand dollars at the lowest estimate.

DANIEL McLAUGHLIN.

Subscribed and sworn to before me this 20th day of December, 1873.
J. W. BRUNER,
Clk. S. C.

Filed Dec. 20th, 1873. J. W. Bruner, clerk S. C.

TERRITORY OF WYOMING:

In supreme court, July term, 1873.

THE BOARD OF THE COUNTY COMMISSIONERS of the county of Laramie, complainant,
vs.
THE BOARD OF THE COUNTY OMMISSIONERS OF the county of Albany and the board of the county commissioners of the county of Carbon, defendants.

66 To said defendants and to the clerk of said supreme court:

Take notice that the above-named complainant appeals from the order and judgment of the supreme court of said Territory in the above-entitled cause, at the July term of said court, 1873, to the Supreme Court of the United States.

THE BOARD OF THE COUNTY COMMISSIONERS OF THE COUNTY OF LARAMIE,
Complainant.

DANIEL McLAUGHLIN,
Solicitor for Complainant.

TERRITORY OF WYOMING,
County of Laramie:

I hereby certify that I received the within writ on December 20th, 1873, at 11 o'clock a. m., and served the same at Laramie County, aforesaid, as follows:

On December 20th, 1873, I delivered to J. W. Bruner, clerk of the supreme court of said Territory, a certified copy of this writ, and on Dec

22, 1873, I delivered to W. W. Corlett, attorney of the defendants herein, a certified copy of this writ.

T. J. CARR,
Sheriff of Laramie County.

67 (Endorced on the back as follows:) Notice of appeal. Filed Dec. 29th, 1873. J. W. Bruner, clerk S. C.

68 TERRITORY OF WYOMING,
County of Laramie, ss:

In supreme court.

I, J. W. Bruner, clerk of the supreme court of Wyoming Territory, do hereby certify that the above and foregoing pages contain a true and correct copy of the bill of complain*ant*, subpœnas with returns, demurrers, order of court sustaining demurrers, notice of appeal to the supreme court of Wyoming Territory, judgment and opinion of supreme court affirming judgment of the district court, affidavits of amount of subject-matter in controversy, and notice of appeal to the Supreme Court of the United States in the case entitled "The board of the county commissioners of the county of Laramie against The board of the county commissioners of the county of Albany and the board of the county commissioners of the county of Carbon," so full and entire as the same remains on record in my office.

In testimony whereof I have hereunto set my hand and affixed
69 the seal of said supreme court this 30th day of December, A. D. 1873.

[SEAL.]

J. W. BRUNER,
Clerk Supreme Court Wyoming Territory.

TERRITORY OF WYOMING,
County of Laramie, ss:

In supreme court.

I, J. W. Fisher, chief-justice of Wyoming Territory, do hereby certify that the above and foregoing named J. W. Bruner, by whom the foregoing attestation was made, was, at the time of so making the same, and is now, the clerk of the said supreme court, duly commissioned and qualified, to all of whose acts, as such, full faith and credit are and ought to be given, as well in courts of judicature as elsewhere; that the seal thereto attached is the seal of said supreme court; and I further certify that the said attestation so made by him is in due form of law.

70 In testimony whereof I have hereunto set my hand this 30th day of December, A. D. 1873.

J. W. FISHER,
Chief-Justice of Wyoming Territory.

(Indorsed:) The board of the county commissioners of the county of Laramie against The board of the county commissioners of the county of Albany and the board of the county commissioners of the county of Carbon. Transcript.

(Indorsement on cover:) No. 153. The board of the county commissioners of the county of Laramie, appellants, vs. The board of the county commissioners of the county of Albany and the board of the county commissioners of the county of Carbon. Wyoming Territory sup. court. Filed 26th February, 1874.

In the Supreme Court of the United States:

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF WYOMING:

IN CHANCERY:

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LARAMIE, } *Complainant,*

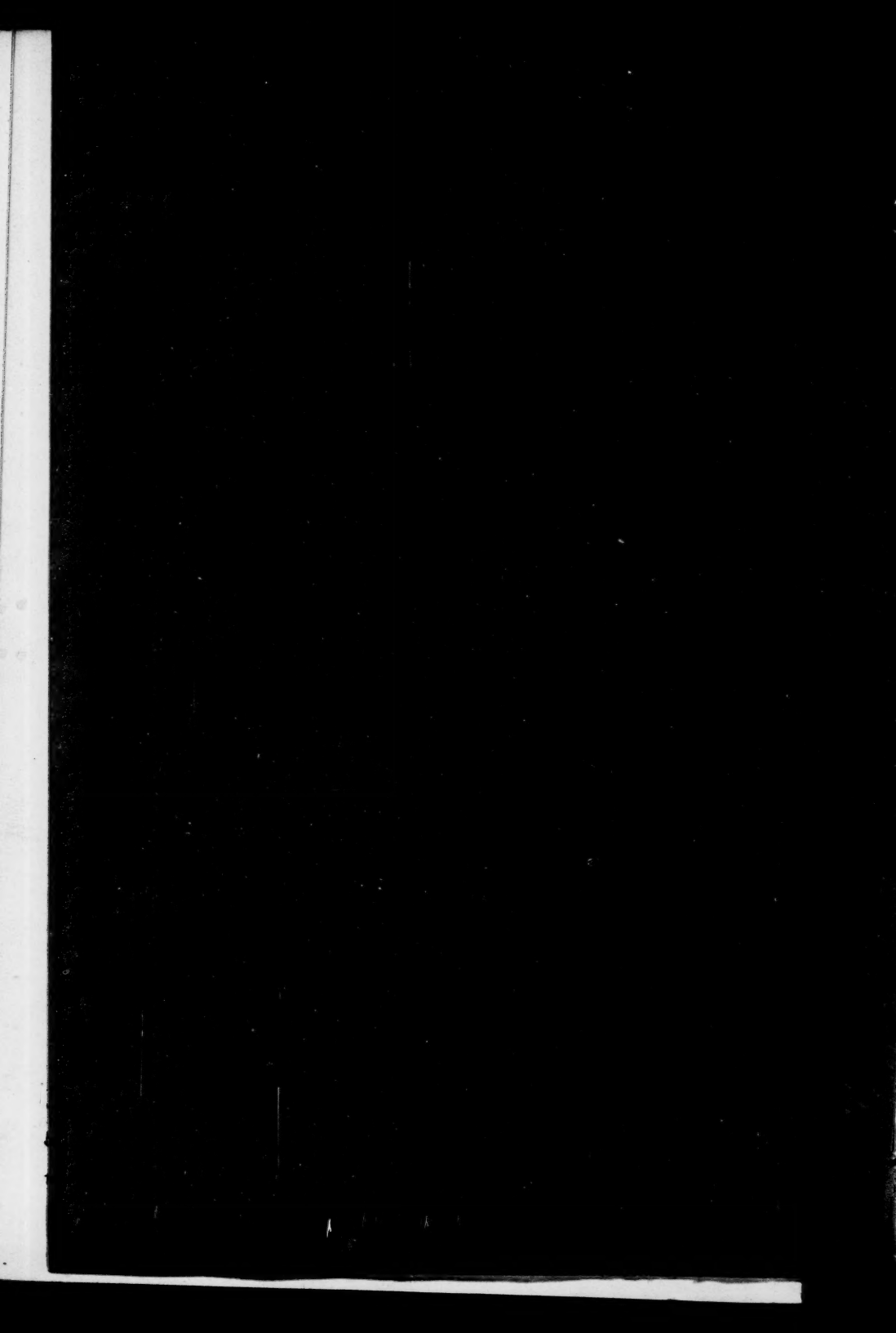
VS.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ALBANY, AND THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CARBON, } *Def'd'ts.*

DANIEL McLAUGHLIN,
Complainant's Solicitor.

"Leader" Book and Job Print, Cheyenne, Wyo.

1874.



In the Supreme Court of the United States:

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF WYOMING:

IN CHANCERY:

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LARAMIE, *Complainant,*

vs.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ALBANY, AND THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CARBON, *Def'd'ts.*

DANIEL McLAUGHLIN,
Complainant's Solicitor.

1874.

IN DISTRICT COURT,
FIRST JUDICIAL DISTRICT, } *In Chancery.*

BILL OF COMPLAINT:

The Board of County Commissioners of the County of Laramie,

AGAINST

The Board of County Commissioners of the County of Albany, and the Board of County Commissioners of the County of Carbon:

To the Honorable, the Judge of the District Court of the First Judicial District of the Territory of Wyoming, in and for the county of Laramie:—*In Equity Sitting:*—

The Board of County Commissioners of the county of Laramie, in said Territory of Wyoming, brings this its bill of complaint against the Board of County Commissioners of the county of Albany, in said Territory, and the Board of County Commissioners of the county of Carbon, in said Territory:—And thereupon your orator complains and says, that said county of Laramie is a citizen of the United States, and a corporation duly incorporated by virtue of an act of the Legislative Assembly of the Territory of Dakota, entitled "an act to create and organize the county of Laramie," passed at the sixth session, and approved by the Governor of said Territory on the 9th day of January 1867; to which said act your orator, for greater certainty, begs leave here to refer.

Your orator further showeth unto your honor that at the date last above mentioned, said county of Laramie was a part of said Territory of Dakota; that thereafter and while said county still continued to be a portion of said Territory of Dakota, it was duly re-organized by virtue of an act of the Legislative Assembly of Dakota Territory, entitled "an act to re-organize the county of Laramie," passed at the seventh session, and approved by the Governor of said Territory on the third day of January, 1868, to which said act your orator, for greater certainty, begs leave here to refer.

Your orator further showeth unto your honor, that at the date of its re-organization as aforesaid, the said county of Laramie, in said Territory of Dakota, embraced within its Territorial limits all that territory now comprising the counties of Laramie, Albany and Carbon, in the Territory of Wyoming, and being an area of three and one-half degrees from east to west, and four degrees from north to south.

Your orator further showeth unto your honor, that at the date of the re-organization of Laramie county as aforesaid, and for several months before that time, the construction of the Union Pacific Railroad and Telegraph lines was being carried on, and being rapidly pushed towards completion from the eastern boundary of said Laramie county towards its western boundary, and was so completed, and about the number of two hundred and sixty miles of railroad and telegraph line was built by the Union Pacific Railroad Company, between the east and west lines of said county of Laramie before the 16th day of December, 1868.

Your orator further shows unto your honor, that said Union Pacific Railroad Company also built along the line of its railroad in said Laramie county, before said 16th day of December, 1868, a great number of valuable buildings, including railroad depots, warehouses, telegraphic stations, station houses, hotels, round houses, engine houses, store houses and workshops, whose value was not less than five hundred thousand dollars; that the road bed was not of less value than six thousand dollars per mile, or about one million six hundred thousand dollars for its entire length in said Laramie county.

Your orator further shows unto your honor that during the spring, summer and fall months of said year 1868 a number of thrifty towns sprang up along the line of said railroad, prominent among which were the towns of Laramie, Wyoming, Carbon, Brownville, Benton and Rawlins, which added very largely to the wealth of Laramie county, and most of which have become permanent in their character.

Your orator states upon information and belief, and so charges the fact to be, that the aggregate value of permanent improvements made during the said months at the points named, was not less than two hundred and fifty thousand dollars; that prior to the re-organization of Laramie county as aforesaid, the towns of Cheyenne, Sherman and Dale Creek had sprung into existence, and your orator states on information and belief, and so charges the fact to be, that the aggre-

gate value of permanent improvements at the three last named places, exclusive of the Union Pacific Railroad Company's property, on the sixteenth day of December, 1868, was not less than five hundred thousand dollars.

Your orator further shows unto your honor that during the summer and fall of 1868 large herds of cattle had accumulated on the Laramie plains, in what is now Albany county, of the value of seventy-five thousand dollars, as your orator is informed and believes, and so charges the fact to be, and that said herds have from and since that time been increasing in numbers and value.

Your orator further shows unto your honor that during the year of 1868 valuable coal mines were discovered and worked with great profit in the vicinity of Carbon, in what is now Carbon county; that your orator is informed, and believes, and so charges the fact to be, that these coal mines were of at least the value of fifty thousand dollars.

Your orator further shows unto your honor upon its information and belief, and so charges the fact to be, that on the sixteenth day of December, 1868, there was in the said county of Laramie, property, both real and personal, of the value of at least three millions of dollars; and that nearly all of the same was then, and is now, of a permanent character; and that all of said property was subject to assessment and levy of taxes under and by virtue of the laws of said Territory of Dakota, for Territorial, county, district court, hospital, road and bridge, and school purposes.

Your orator further showeth unto your honor that the persons named as officers in the act creating and organizing the county of Laramie, approved January 9th, 1867, did not qualify nor enter upon the discharge of the duties of their respective offices; that by reason of this failure and neglect to qualify and discharge official duties, the said county of Laramie remained in an inchoate condition until the month of January, 1868, at which time all the persons named as officers of said county in the act to re-organize the county of Laramie, approved January 3d, 1868, duly qualified and entered upon and discharged the duties of their respective offices, and continued to discharge the duties of their said offices, respectively, until their successors were duly elected and qualified.

Your orator further showeth unto your honor that at the date of the re-organiztion of said county as aforesaid, and for some months prior

to that time, the construction of the Union Pacific railroad and telegraph lines, the building of its stations, warehouses, engine houses, round houses, depots, hotels, storehouses and workshops, the building of the numerous towns along the line of said road as aforesaid, brought into the then limits of said county many thousands of persons, and including, as well as contractors, laborers, teamsters, mechanics of the various trades, artizans, engineers, merchants, traders and professional men, outlaws of both sexes, convicted and unconvicted felons, desperadoes, criminals of high and low degree, and a legion of knaves, common cheats and swindlers! That while the former classes were engaged in works of enterprise and industry, and adding to their private gain and the wealth of said county, the latter were engaged in violating the laws by numerous murders, robberies, larcenies, riots, and other breaches of the peace, and by various other kinds of outrages against law, order, and public decency, too numerous to mention and tedious to mention in detail.

Your orator further states that this condition of society continued in said county from the date of its re-organization as aforesaid, gradually, "like the star of empire," moving westward, during the greater portion of the year 1868, until the latter part of that year, when it crossed its western boundary, and fell, like a cloud of Egyptian locusts, upon the adjoining county of Carter, in said Territory of Dakota, and upon the neighboring Territory of Utah.

Your orator further shows that this condition of society in said county during the year 1868, made the police, court and hospital expenses of said county very large, amounting to many thousand dollars; that the distance from the county seat to the western boundary of said county, was over two hundred miles, the sheriff and his deputies and the constables of said county, very frequently were required to go from the county seat to the limits of said county, to make arrests of persons charged with the commission of felonies and misdemeanors, and to do other acts required of them in the discharge of their official duties; the expenses of which were chargeable and were charged to the county of Laramie, and afterwards paid by said county. That a very large portion of the arrests thus made were for violations of the laws committed in that portion of Laramie county that is now comprised in the said counties of Carbon and Albany; that often the persons so arrested as aforesaid, were held in custody, for trial at the District

Court, at great expense to said county of Laramie, and amounting to many thousands of dollars; that the salaries of the county officers of said county of Laramie, the expenses for rent for county offices, fuel, lights, stationery and other incidental expenses of said offices amounting to many thousand dollars more,—all of which was chargeable to, and was charged to said county of Laramie, and which since has been paid by a small portion of the taxable property of the then county of Laramie.

Your orator further shows unto your honor that the taxable property in said county of Laramie of about the value of three millions of dollars was, at and before the organization of the counties of Albany and Carbon, as will be hereinafter more definitely stated, legally and equitably liable to pay by assessment and levy, all of the indebtedness so incurred by said Laramie county in preserving order, protecting persons and property in their rights, and giving to the community a fair degree of peace and sense of security, as herein alleged, and for all other kinds of liabilities necessary, and legally incurred.

Your orator further shows unto your honor that after said county of Laramie had incurred vast liabilities in the manner aforesaid, before the creation and organization of the counties of Albany and Carbon, and amounting to nearly forty thousand dollars, the said counties of Albany and Carbon were organized out of the western portion of the county of Laramie, by virtue of two acts of the Legislative Assembly of said Territory of Dakota entitled respectively "an act to organize the county of Albany," and "an act to organize the county of Carbon," both passed at its eighth session, and approved by the Governor of said Territory on the 16th day of December, 1868, to which said acts your orator, for greater certainty, here begs leave to refer.

Your orator further shows unto your honor that no provisions were made in either of said acts creating said counties of Albany and Carbon, for each of said counties to assume its just proportion of the debts and liabilities existing at the date of their creation against the county of Laramie, and which were incurred by the county of Laramie in the manner hereinbefore stated, for the common welfare of all persons and property within its limits. That by said acts creating said counties of Albany and Carbon, fully two-thirds of the wealth and taxable property existing in said county of Laramie were withdrawn from its jurisdiction, and its limits reduced geographically to less than one-third of its former size; and the whole of all the debts and liabili-

ties of the original county were imposed upon the present county of Laramie, which has had to pay all of such debts and liabilities.

Your orator further shows unto your honor that from the date of its organization until the creation of the counties of Albany and Carbon, the county of Laramie received from all sources of revenue only about the sum of twelve thousand dollars; thus leaving the actual indebtedness at the date of the creation of these two counties about the sum of twenty-eight thousand dollars. That the present county of Laramie has been compelled, in order to pay off and discharge this indebtedness incurred as aforesaid, for the three years last passed, to assess, levy and collect onerous and burdensome taxes on the wealth and property of its citizens.

Your orator further shows unto your honor that each of said counties of Albany and Carbon are justly liable to your orator for its proportionate share of the indebtedness so paid off by Laramie county, as aforesaid, in the proportion of the amount of permanent assessable property withdrawn from the jurisdiction of Laramie county, to the whole debt of said county, at the date of withdrawal, less the amount of revenue collected from all sources.

And your orator had well hoped that said Albany county and said Carbon county would have paid to said Laramie county, each its just and fair proportion of the said debt and liability so paid as aforesaid by said Laramie county, as in truth and justice each should do. But now so it is, may it please your honor, that the said defendants, and each of them, refuse to pay any portion of said indebtedness, so paid off and discharged by said county of Laramie; and sometimes pretend there is no liability on their part to pay to your orator or the county of Laramie any portion of the indebtedness of said Laramie county, created prior to the organization of said counties of Albany and Carbon, and which has been paid off and discharged by said county of Laramie. All of which refusals and pretences are contrary to equity and good conscience and tend to the manifest wrong and injury of your orator in the premises.

In consideration whereof, and forasmuch as your orator is remediless at, and by the strict rules of the law, and cannot have adequate relief and redress, save in a court of Equity, where matters of this and a like nature are properly cognizable and relievable,

To the end, therefore, that said defendants may, if they can show

why your orator should not have the relief hereby prayed; and may, upon their respective knowledge, rememberance, information and belief, full and direct and perfect answers make to such of the several interrogatories hereinafter mentioned and set forth, as by the note hereinunder written, they are respectively required to answer, that is to say:

Whether It is not a fact that the county of Laramie was created and organized by an act of the sixth session of the Legislative Assembly of the Territory of Dakota, and re-organized by an act of the seventh session of the Legislative Assembly of the Territory of Dakota, as stated in this bill? And if nay, how is the contrary to be made out? And how otherwise should the fact be stated to have taken place? And for what other purpose were the two acts of said sixth and seventh sessions of the Legislative Assembly of said Territory of Dakota enacted? Exhibits "A" and "B," hereunto annexed, are referred to, as copies of the said two acts.

Second, Whether it is not a fact that said Laramie county, at the date of its re-organization on the 3rd day of January, 1868, and until the 16th day of December following, did embrace and contain within its limits all the territory included in the counties of Laramie, Albany and Carbon, as stated in this bill? And if nay, how is the contrary to be made out? And how otherwise should the fact be stated to have existed at that time?

Third, Whether it is not a fact that at the date of the re-organization of Laramie county, to wit: January 3d, 1868, and for some months prior thereto, the Union Pacific railroad and telegraph lines were being built from the eastern towards the western boundary of said county? And if nay, how is the contrary to be made out? And how should the fact be otherwise stated?

Fourth, Whether it is not a fact that said Union Pacific railroad and telegraph lines were completed from the eastern to the western boundary of said county, about the distance of two hundred and sixty miles, before the 16th day of December, 1868? And if nay, how should the fact be otherwise stated? And how should the truth be made to appear?

Fifth, Whether it is not a fact that said railroad and telegraph were of at least the value of six thousand dollars per mile? And if nay, how is the contrary to be made out? And how otherwise should the fact be stated?

officers of said Laramie county in making arrests of persons charged with violation of laws, paying fees and mileage to county officers for making such arrests in those portions of Laramie county now known as Albany and Carbon counties; in transporting such prisoners to the county seat; in keeping and maintaining such prisoners; in paying expenses of the courts and juries in the examination and trial of such prisoners? And if nay, how, with truth, is the contrary to be made out? And how should the facts be otherwise stated?

Sixteenth, Whether it is not a fact that a large portion of the indebtedness of said Laramie county incurred in 1868 arose from keeping a hospital in said county, which maintained the indigent sick and paupers from all parts of said county? And if nay, how, with truth, should the fact be stated, and how should the contrary be made to appear?

And your orator prays that each of said defendants, upon being served with subpœna, may answer the premises; and that all accounts of all the expenses of said Laramie county in 1868, and prior to the creation and organization of said counties of Albany and Carbon, may be taken by the order of this court, together with an account of all the revenues received by said Laramie county during the same time; that a statement of the assessable property of each of said counties of Albany and Carbon at the time of their creation and organization, and the value of the same, may be set forth in a list or schedule by each of said defendants, and deposited in this honorable court for the use of your orator and all other persons interested in the same; that the proportion of the debt and liabilities incurred by Laramie county in 1868, which each of said counties should fairly and equitably pay, may be fixed and determined by this court, and that the amount which each of said defendants shall pay to your orator may be adjudged by your honor. And that your orator may have such orders, decrees and process as may be necessary to enforce the payment of such sum of money as may be adjudged and found due to your orator from each of said defendants, and for such other and further relief as to this honorable court shall seem just and equitable.

May it please your honor to grant unto your orator a writ of subpœna, to be directed to the "Board of County Commissioners of the county of Albany, and the Board of County Commissioners of the county of Carbon," thereby commanding them and each of them,

at a certain time and under certain penalties therein to be expressed, to personally appear before this honorable court, and then and there full, true, direct and perfect answers make to all and singular the premises and farther to stand to, perform and abide such further orders, directions and decrees therein as to this honorable court shall seem meet.

Signed, DANIEL McLAUGHLIN,
Solicitor for Complainant.
I. W. COOK,
Prosecuting Attorney for Laramie County.

NOTE.—The defendant, the Board of County Commissioners of Albany county, is required to answer the interrogatories numbered respectively 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15 and 16.

The defendant, the Board of County Commissioners of Carbon county, is required to answer the interrogatories numbered respectively 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15 and 16.

EXHIBIT "A."

An act to create and establish the County of Laramie.

Be it enacted by the Legislative Assembly of the Territory of Dakota:

SECTION 1. That all that portion of the Territory of Dakota west of the one hundred and fourth meridian west, be and the same is hereby created into a county by the name of Laramie, and the following officers are hereby appointed for said county, to act until the next ensuing general election:

County Commissioners—W. L. Kuykendall, Philip Mandel and William L. Hopkins.

Sheriff—Robert Foot.

Judge of Probate—Geo. Wilson Jr.

Register of Deeds—James C. Lehmer.

Justice of the Peace—Robert Tate.

Constable—Frank Ernest.

Coroner—B. J. Walters.

SEC. 2. The Governor may appoint as many notaries public as he may deem necessary.

SEC. 3. The county seat of said counties is hereby located at Fort Sanders, and said counties shall be entitled to one representative in the Legislative Assembly, until otherwise provided by the Legislative Assemby.

SEC. 4. This act shall take effect and be in force from and after its passage.

Approved January 9th, 1867.

—(*Sixth Session Legislative Assembly, Laws of Dakota Territory,* 1866–7. p. 43).

EXHIBIT "B."

An act to re-organize the county of Laramie.

Be it enacted by the Legislative Assembly of the Territory of Dakota:

SECTION 1. That chapter —— of the session laws of 1866–67, entitled an act to create and establish the county of Laramie, approved January 9th, 1867, be and the same is hereby repealed; and all elections held or pretended to be held under and by virtue of said act are hereby declared null and void, and shall be held for naught.

SEC. 2. That all that portion of the Territory of Dakota west of the one hundred and fourth meridian west, and east of the one hundred and seventh degree and thirty minutes west, be and the same is hereby created into a county by the name of Laramie; and the following officers are hereby appointed for said county, to act until the next ensuing general election, and until their successors are duly elected and qualified:

County Commissioners—Benjamin Ellinger, Roger F. Beall and Patrick McDonald.

Sheriff—J. L. Laird.

Judge of Probate—Wm. L. Kuydendall.

Register of Deeds—William Morris.

Justice of the Peace—N. J. Bond, A. B. More and Lewis Lowery.

Constable—James Masterson.

Coroner—F. W. Johnson.

County Superintendent of Public Instruction—J. H. Gildersleeve.

Surveyor—S. W. Winsor.

District Attorney—Ed. P. Johnson.

SEC. 3. The county commissioners may fill all vacancies in county offices, and the persons so appointed shall hold their respective offices until the next general election, and until their successors are duly elected and qualified.

SEC. 4. The Governor may appoint as many notaries public for said county as he may deem necessary.

SEC. 5. The county seat of said county is hereby located at the city of Cheyenne.

SEC. 6. Until otherwise provided by laws, said county shall be entitled to one member of the House of Representatives of the Legislative Assembly.

SEC. 7. This act shall take effect and be in force from and after its passage and approval.

Approved January 3rd, 1868.

—(*Seventh Session Legislative Assembly, Laws of Dakota Territory,* 1867–68, p. 123).

EXHIBIT "C."

An Act to Organize the County of Albany.

Be it enacted by the Legislative Assembly of the Territory of Dakota:

SECTION 1. That all that portion of Dakota Territory embraced within the following described boundaries shall be known as the county of Albany, to wit: commencing at Buford station, on the Union Pacific railroad; thence due north to the forty-fifth parallel of north latitude; thence west along said parallel to the one hundred and seventh degree and thirty minutes west longitude; thence south along said parallel to a point due south of Buford Station, and thence north to the point of beginning, and the following officers are hereby appointed for said county, to act until the next ensuing general election, and until their successors are duly elected and qualified.

County Commissioners—J. W. Collins, Fred. Laycock and T. J. Bath.

Sheriff—Thomas D. Sears.

Probate Judge—M. C. Page.

Register of Deeds—A. W. McClearn.

Justices of the Peace—N. F. Weller, J. C. Walter, B. F. Green and H. C. Hall.

Constables—S. Orsborn, Samuel Douglas, A. Trabing and E. Carter.

Coroner—J. H. Frinfrock.

County Superintendent of Public Instruction—Geo. W. Lancaster.

Surveyor—H. H. Richards.

District Attorney—E. S. Kerr.

SEC. 2. The County Commissioners may fill all vacancies in county offices, and the persons so appointed shall hold their offices

SEC. 4. This act shall take effect and be in force from and after its passage.

Approved January 9th, 1867.

—(*Sixth Session Legislative Assembly, Laws of Dakota Territory,* 1866–7. p. 43).

EXHIBIT "B."

An act to re-organize the county of Laramie.

Be it enacted by the Legislative Assembly of the Territory of Dakota:

SECTION 1. That chapter —— of the session laws of 1866–67, entitled an act to create and establish the county of Laramie, approved January 9th, 1867, be and the same is hereby repealed; and all elections held or pretended to be held under and by virtue of said act are hereby declared null and void, and shall be held for naught.

SEC. 2. That all that portion of the Territory of Dakota west of the one hundred and fourth meridian west, and east of the one hundred and seventh degree and thirty minutes west, be and the same is hereby created into a county by the name of Laramie; and the following officers are hereby appointed for said county, to act until the next ensuing general election, and until their successors are duly elected and qualified:

County Commissioners—Benjamin Ellinger, Roger F. Beall and Patrick McDonald.

Sheriff—J. L. Laird.

Judge of Probate—Wm. L. Kuydendall.

Register of Deeds—William Morris.

Justice of the Peace—N. J. Bond, A. B. More and Lewis Lowery.

Constable—James Masterson.

Coroner—F. W. Johnson.

County Superintendent of Public Instruction—J. H. Gildersleeve.

Surveyor—S. W. Winsor.

District Attorney—Ed. P. Johnson.

SEC. 3. The county commissioners may fill all vacancies in county offices, and the persons so appointed shall hold their respective offices until the next general election, and until their successors are duly elected and qualified.

SEC. 4. The Governor may appoint as many notaries public for said county as he may deem necessary.

SEC. 5. The county seat of said county is hereby located at the city of Cheyenne.

SEC. 6. Until otherwise provided by laws, said county shall be entitled to one member of the House of Representatives of the Legislative Assembly.

SEC. 7. This act shall take effect and be in force from and after its passage and approval.

Approved January 3rd, 1868.

—(*Seventh Session Legislative Assembly, Laws of Dakota Territory,* 1867–68, p. 123).

EXHIBIT "C."

An Act to Organize the County of Albany.

Be it enacted by the Legislative Assembly of the Territory of Dakota:

SECTION 1. That all that portion of Dakota Territory embraced within the following described boundaries shall be known as the county of Albany, to wit: commencing at Buford station, on the Union Pacific railroad; thence due north to the forty-fifth parallel of north latitude; thence west along said parallel to the one hundred and seventh degree and thirty minutes west longitude; thence south along said parallel to a point due south of Buford Station, and thence north to the point of beginning, and the following officers are hereby appointed for said county, to act until the next ensuing general election, and until their successors are duly elected and qualified.

County Commissioners—J. W. Collins, Fred. Laycock and T. J. Bath.

Sheriff—Thomas D. Sears.

Probate Judge—M. C. Page.

Register of Deeds—A. W. McClearn.

Justices of the Peace—N. F. Weller, J. C. Walter, B. F. Green and H. C. Hall.

Constables—S. Orsborn, Samuel Douglas, A. Trabing and E. Carter.

Coroner—J. H. Frinfrock.

County Superintendent of Public Instruction—Geo. W. Lancaster.

Surveyor—H. H. Richards.

District Attorney—E. S. Kerr.

SEC. 2. The County Commissioners may fill all vacancies in county offices, and the persons so appointed shall hold their offices

until the next general ensuing election, and until their successors are duly elected and qualified.

SEC. 3. The Governor may appoint as many Notaries Public for said county as he may deem necessary.

SEC. 4. The county seat of said county is hereby located at Laramie city.

SEC. 5. The County Commissioners of said county shall have the power at any regular meeting of the board to make an order increasing the fees of county officers, *Provided, however,* that the fees of said officers shall not be increased more than three times what is now allowed by law.

SEC. 6. This act shall take effect and be in force from and after its passage and approval.

Approved, December 16th, 1868.

—[*Eighth session Legislative Assembly, Laws of Dakota Territory,* 1868—69; p. 311.]

EXHIBIT "D."

An Act to Organize the County of Carbon.

Be it enacted by the Legislative Assembly of the Territory of Dakota:

SECTION 1. That all that portion of Dakota Territory embraced within the following described boundaries, shall be known as the county of Carbon, to wit: commencing at Como station, on the Union Pacific railroad, thence due north to the forty-fifth parallel of north latitude, thence west along said parallel to the one hundred and seventh degree and thirty minutes, west longitude, thence south along the eastern boundary of Carter county, to the forty-first parallel of north latitude; thence east along said parallel to a point due south of Como station, and thence due north to place of beginning; and the following officers are hereby appointed for said county, to act until the next ensuing general election, and until their successors are duly elected and qualified.

County Commissioners—John C. Dyer, G. Frazer, and S. M. Burr.

Sheriff—John Gurrell.

Probate Judge—Francis B. Edwards.

Constables—George Board and M. E. Metcalf.

District Attorney—L. P. Corry.

SEC. 2. The County Commissioners may appoint officers to fill the various county offices existing under the general laws of the Terri-

tory which are not herein provided for, and fill all vacancies in county offices, and the persons so appointed shall hold their respective offices until the next general ensuing election, and until their successors are duly elected and qualified.

SEC. 3. The Governor may appoint as m ny notaries public as he may deem necessary for said county.

SEC. 4. The county seat of said county is hereby located at Rawlins Springs.

SEC. 5. The County Commissioners of said county shall have the power at any regular meeting of the board to make an order increasing the fees of county officers, *Provided however*, that the fees of said officers shall not exceed three times what is now allowed by law.

SECTION 6. This act shall take effect and be in force from and after its passage.

Approved December 16th.

—[*Eighth session of the Legislative Assembly, laws of Dakota Territory,* 1868–9, *pp.* 3_0.]

And thereupon, on September 16th, 1872, there was filed in the Clerk's office a demurrer, in words and figures as follows, to-wit:

TERRITORY OF WYOMING, County of Albany, *ss.*

In District Court, First Judicial District:

The "Board of the County Commissioners of the County of Laramie," complainant, *versus* the "Board of the County Commissioners of the County of Albany," and the "Board of the County Commissioners of the County of Carbon," defendants. In chancery.

The demurrer of the Board of the County Commissioners of the County of Carbon, one of the defendants to the bill of complaint of the Board of County Commissioners of the County of Laramie, complainant:—

This defendant by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill to be true in such manner and form as the same are therein set forth and alleged, doth demur thereto, and for cause of demurrer showeth,

That the said complainant hath not in and by its said bill made or stated such a case as doth or ought to *entitle* it to any such discovery or relief as is thereby sought and prayed for, from or against this defendant.

Wherefore this defendant demands the judgment of this honorable court, whether it shall be compelled to make any further or other answer to the said bill or any of the matters and things therein contained, and prays to be hence dismissed, with its reasonable costs in this behalf sustained.

BOARD OF THE COUNTY COMMISSIONERS OF THE COUNTY OF CARBON, *Defendant.*

W. W. CORLETT, Solicitor, &c.

TERRITORY OF WYOMING, County of Albany, *ss.*

In the District Court First Judicial District:

The Board of County Commissioners of the county of Laramie, complainant, *versus* the "Board of County Commissioners of the county of Albany," and the Board of County Commissioners of the county of Carbon, defendants. In chancery.

The demurrer of the Board of County Commissioners of the county of Albany, one of the defendants to the bill of complaint of the Board of County Commissioners of the county of Laramie, complainant:—

This defendant by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill to be true in such manner and form as the same are therein set forth and alleged, doth demur thereto, and for cause of demurrer showeth, that the said complainant hath not in and by its said bill made or stated such a case, as doth or ought to *entitle* it to any such discovery or relief as is thereby sought and prayed for, from or against this defendant.

Wherefore, this defendant demands the judgment of this honorable court, whether it shall be compelled to make any further or other answer to the said bill or any of the matters and things therein contained, and prays to be hence dismissed, with its reasonable costs in this behalf sustained.

BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ALBANY, *Defendant.*

STEPHEN W. DOWNEY,
County Attorney for Albany County,
Solicitor, &c.

And thereupon, on the 13th day of March, A. D. 1873, the following journal entry was made as follows, to wit:

And now, on this 13th day of March, A. D. 1873, this cause coming on to be heard upon the demurrers of the Board of the County Commissioners of Albany county, and the Board of the County Commissioners of the county of Carbon, the defendants herein, to the bill of complaint of the Board of the County Commissioners of the county of Laramie, complainant herein, and after argument by counsel, it is considered, ordered, adjudged and decreed that the said demurrers be sustained, and that the bill of complaint herein be dismissed. To all of which said ruling, order and judgment of the court sustaining said demurrers of said defendants, the said complainants, by counsel, then and there excepted, and prayed that said exception in that behalf might be allowed, all which is so done accordingly.

And thereafter the following notice of appeal was filed as follows, to-wit:

TERRITORY OF WYOMING, County of Albany, *ss.*

In the District Court of the First Judicial District—In Chancery Sitting:

The Board of County Commissioners of the County of Laramie, *against* The Board of the County Commissioners of the County of Albany, and the Board of the County Commissioners of the county of Carbon:

NOTICE OF APPEAL.

To the Register in Chancery of said Court:

You will take notice the Board of the County Commissioners of the county of Laramie appeal from the ruling, order, judgment and decree heretofore rendered in this cause by the District Court aforesaid in sustaining the demurrers of the said "the Board of the County Commissioners of the county of Albany," and "the Board of the county Commissioners of the county of Carbon," to the bill of complaint herein, of the said "the Board of the County Commissioners of the county of Laramie." Said appeal being taken to the Supreme Court of the Territory of Wyoming. And you will please certify the entire record in said cause to said Supreme Court.

DANIEL McLAUGHLIN,
Complainant's Solicitor, (by Steele).

Endorsed on the back as follows:

"Filed April 11th 1873. J. W. Bruner, Register, by J. W. Meldrum, Deputy."

And on the 7th of July 1873, the foregoing cause was filed in the Supreme Court of Wyoming Territory, endorsed on the back as follows:

"The Board of the County Commissioners of Laramie county, *vs.* The Board of County Commissioners of Albany and Carbon counties. Filed July 7th, 1873. J. W. Bruner, Clerk S. C.

And at our regular July term 1873 of the said Supreme Court of Wyoming Territory the following order was made as follows, to wit:

JULY TERM, 1873, Monday July 21st, 1873.

The Board of the County Commissioners of the county of Laramie, Complainant, *versus* The Board of the County Commissioners of the county of Albany and the Board of the County Commissioners of the county of Carbon, Defendants.

It is now considered and adjudged by the Court that the decision of the Court below, be and is hereby in all respects, affirmed in its rulings in this cause, to which decision and ruling of this Court the appellant, the Board of County Commissioners of Laramie county, then and there excepted.

J. W. FISHER,
Chief Justice Wyoming Territory.

And thereupon the following opinion was filed in the Clerk's office of the Supreme Court of Wyoming Territory as follows, to wit:

TERRITORY OF WYOMING, In Supreme Court, } *In Chancery.*

The Board of the County Commissioners of the county of Laramie,

versus

The Board of the County Commissioners of the county of Albany and the Board of the County Commissioners of the county of Carbon.

Appeal from the judgment and decree of the District Court of the First Judicial District, sustaining the demurrers of the defendants herein, to the said plaintiff's bill of complaint.

An act was passed by the Legislative Assembly of the Territory of Dakota and approved January 9th, 1867, by the Governor of said Territory, to create and organize the county of Laramie, and subsequently said Legislative Assembly passed an act to re-organize said county of Laramie, which was approved by the Governor of Dakota on the 3d day of January 1868. Said county as re-organized comprised that portion of said Territory which now forms the counties of Laramie, Albany and Carbon, in the Territory of Wyoming. By the last

named act the city of Cheyenne, in the present county of Laramie, was designated as the county seat. At the time of such re-organization, for several months after, and until December 16th, 1868, the Union Pacific Railroad Company was constructing its road and telegraph lines through the southern part of said county of Laramie for a distance of about two hundred and sixty miles from the eastern to the western limits thereof. And said company erected along the line of said railroad a large number of valuable buildings, including depots, warehouses, telegraph stations, station houses, hotels, round houses, engine houses and workshops, estimated in said complaint at the value of $500,000, the like estimate of the value of such railroad in Laramie county being $1,600,000.

The complainant further alleges that during the spring and summer of 1868 a number of towns and villages were built along the line of said railroad, and that the value of permanent improvements during the time last mentioned, was at least $250,000, and that at the time of the re-organization of said county as aforesaid, the aggregate value of permanent improvements in the towns of Cheyenne, Sherman and Dale Creek, in said county of Laramie, was not less than $500,000.

It is further alleged that in the summer of 1868 large herds of cattle, of the estimated value of $75,000, were brought upon Laramie plains, now in Albany county, and that the same have since been increasing in numbers and value; and that, at about the same time, coal mines of considerable value were discovered and worked in what is now Carbon county; that on the 16th day of December, 1868, the value of property of a permanent nature in the entire county of Laramie was of the value of $3,000,000, subject to assessment. It is further shown that the persons named as officers in the act organizing Laramie county failed to qualify, and by reason thereof the interests and affairs of said county were neglected until January, 1868, when the officers named in the act re-organizing said county, qualified and entered upon the discharge of the duties of their respective offices until their successors were duly elected and qualified.

The complainant also states that at the time of the construction of the Union Pacific railroad, in addition to the workmen and other employees of said company, who came within the limits of Laramie county for the purpose of constructing said railroad, and the buildings and telegraph lines of said company, a great number of felons and

other criminals infested the entire country through which the railroad was then being built, committing a large number of crimes and depredations, thereby rendering the employment of numerous peace officers necessary, which, in addition to court, hospital and other expenses arising therefrom, made a heavy expenditure necessary by said county, which expenses, with the salaries, fees and disbursements of the county officers for the year 1868, were, it is claimed, subsequently paid by that portion of the county only which now forms Laramie county, except the sum of $12,000, assessed upon and paid in 1868 by the entire county as originally organized. It is further claimed by the plaintiff that the full amount of such expenditures was about $40,000, leaving a balance of $28,000 for a contribution towards the payment of which last named sum, by the counties of Albany, and Carbon this action is brought. It is further shown by the acts of the Dakota Legislature above referred to, that no provisions were made by the same for the payment of such indebtedness.

To the bill of complaint both of the defendants severally demurred, for the reason:

That the said complainant did not, in and by its said bill, make or state such a case as did or ought to entitle it to any such discovery or relief as is thereby sought and prayed for from or against the defendant, which said demurrers were sustained by the District Court, and an appeal is brought to this Court from such decision.

Messrs. McLaughlin and Steele, for the plaintiff, cite:

Laws of Wyoming, pp. 146–7, 1869—*Laws of Dakota*, 1868—*Laws of Wyoming, p.* 707, 1869—2*nd Kent, pp.* 331–332–333—*Cooley's Constitutional Limitations, pp.* 488–504—*Vattel's Law of Nations, pp.* —21*st Penn. Stat., p.* 107—*Morford vs. Unger*, 8*th Iowa*, (*Clark*) *p.* 82—*Angel & Ames on Corporations, pp.* 1 *to* 20—*Dillon on Municipal Corporations, Sec.* 10, *pp.* 30 *to* 42, *and* 55—*Dillon's Cir. Crt Rep., p.* 330—5*th Ohio Stat., p.* 496—8*th Iowa, p.* 92—3*d Iowa, p.* 604—*Story's Eq. Juris., Chap.* 1—1*st Story's Eq. Juris, Sec.* 64—1*st Story's Eq. Juris., Sec.* 469 *to* 505—10*th Mass., p* 384—3*d Sargent & Rawle, p.* 117—27*th Penn., p.* 107.

Messrs. Corlett and Bramel, for the defendants, cite:

16*th Mass., p.* 76—52*nd Penn., p.* 374—4*th Mass., p.* 390—31*st N. Y., p.* 164—2*nd Wendall*, (*N. Y.*), *p.* 109—11*th Ohio, p.* 96—6*th Cushing, pp.* 575 *to* 578—15*th Mass., p.* 197—8*th Iowa, p.* 82—16*th Mass., p.* 16—*Cooley's Constitutional Limitations, p.* 189, *et seq.*—*Cooley's Constitutional Limitations, p.* 488—16*th Mass., p.* 76—12*th La., p.* 515—*Dillon on Municipal Cor., Secs.* 30, *et seq.*—

3d Howard, p. 534—*8th Ohio Stat., p.* 285—*10th Howard, pp.* 511 *to* 541—*4th Gray, p.* 250.

The rule appears to be well established that upon the state of facts set forth in the complainant's bill, where a county has been divided by an act of a Legislature, one portion thereof retains the former name, county seat, county organization, county buildings, and all other county property; and the other portion, being formed into new counties, that the county retaining such name and organization is responsible and liable solely for the entire indebtedness of the county at the time of such division; and can not bring an action for contribution against the counties so set off, unless especially authorized so to do by an act or provision of the Legislature making such division. That such Legislature is empowered to make a division upon such terms and conditions in reference to the payment of any indebtedness then accrued as it may deem proper, and that even a court of equity can not interfere in the matter except in the case of a special provision as above mentioned. I am further of the opinion that even if the foregoing rule did not hold good, that the complainant herein can have no relief in chancery. From the very nature and condition of affairs set forth in the complaint, it appears that it would be impossible to obtain equitable relief, or that a court or master in chancery could arrive at any just computation of the amount that would be due from the defendants or either of them to the complainant. It appears from the complaint that quite a portion of the original indebtedness has been paid by taxes assessed upon the western portion of the former county of Laramie; but it does not appear from the showing of the complainant that it is in the power of the complainant, or that there are any means whatever to prove either the just proportion of the taxes already paid by the counties of Albany and Carbon, or the amount of property existing in December, 1868, in that portion of Laramie county now forming Albany and Carbon. On the contrary, it rather appears by the statements of the complainant, that from the vague and indefinite condition in which the affairs of Laramie county then were, and the property contained therein has since continued to be, that an equitable adjudication of the case could not be obtained. It appears that the western portions of the county had, up to December, 1868, paid their taxes according to the assessments then made by the officers of Laramie county, and it is to be presumed that such assessments were

correct, at least far more so than any which could be arrived at, at this late day.

The complaint states, that during the year 1868, the officers of Laramie county had qualified, entered upon and were discharging the duties of their offices, and the inference certainly is, that they performed their duties in a just and equitable manner, that the assessment for that year was as correct as could, under the circumstances, be made, and that the amount of taxes then paid by that portion of said county, now forming Albany and Carbon, was the equitable proportion of those counties. If equity is to be administered, it should certainly be administered strictly; and while it cannot be denied that any one bringing taxable property into or settling within a county becomes to an extent responsible for its liabilities, yet in the inchoate condition of affairs in Laramie county in December, 1868, and from the continual change which has since then taken place in property and the ownership thereof in the counties of Albany and Carbon, I am unable to perceive that it would be any more equitable to compel the present inhabitants of these last named counties to contribute to the former indebtedness of Laramie county, and from which indebtedness the greater portion of such present inhabitants derived no benefit whatever, than to leave said indebtedness as it now is, already paid by the inhabitants of Laramie county, who certainly derived by far the greatest advantages from the above mentioned expenditures, and paid some time since by those inhabitants of Laramie county apparently who had a more direct interest in the affairs of Laramie county, when such indebtedness accrued, than either the present inhabitants and property owners of Laramie county, or of Albany and Carbon counties.

While it is true that their separate quasi-corporations (parties to this suit) have since continued the same, it is equally certain that the inhabitants, property and property owners thereof have greatly changed, and, in a matter of right or equity, I think we should regard the real justice in the case. The decision of the District Court, therefore, sustaining the demurrers of the defendants, is approved, and such decision is affirmed.

TERRITORY OF WYOMING,
In Supreme Court. } *July Term*, 1873.

The Board of the County Commissioners of the County of Laramie, *Complainant, versus*

The Board of the County Commissioners of the County of Albany, and the Board of the County Commissioners of the County of Carbon, *Defendants.*

To said Defendants and to the Clerk of said Supreme Court:

Take notice that the above named complainant appeals from the order and judgment of the Supreme Court of said Territory in the above entitled cause, at the July term of said court, 1873, to the Supreme Court of the United States.

THE BOARD OF THE COUNTY COMMISSIONERS OF THE COUNTY OF LARAMIE, } *Complainant.*

DANIEL McLAUGHLIN,
Solicitor for Complainant.

BRIEF AND ARGUMENT

—OF—

DANIEL MCLAUGHLIN,

Solicitor for Complainant,

IN SUPPORT OF THE BILL.

To the Honorable, the Chief Justice, and Justices of the Supreme Court:—

The facts stated in the bill are briefly these:

The county of Laramie was organized, first, by the Legislature of Dakota Territory, on the 9th day of January 1867, but remained in an inchoate condition, by reason of the persons named as county officers having neglected to qualify and act as such. It was re-organized by the Legislature of Dakota Territory, on the 3d day of January, 1868, and the persons named as county officers in the act re-organizing said county qualified and entered upon the discharge of their official duties.

The geographical limits of the county were not the same in both acts; and the county of Laramie was four degrees from north to south, and three and one-half degrees from east to west, by the act of January 3d, 1868. The population was confined to the southern portion of the county, along the line of the Union Pacific railroad, which was then being constructed across the southern part of the county. The road was about two hundred and sixty miles long within the limits of said county, and was completed to, and beyond the western limit of the county before the 18th day of December 1868. The population in the county during that year—along the line of the railroad—was quite large, and is stated in the bill at "many thousands of persons." The character of the inhabitants was quite varied, and the population "included as well, contractors, laborers, teamsters, mechanics of the

"various trades, artizans, engineers, merchants, traders and profession-
"al men, *outlaws of both sexes, convicted and unconvicted felons, des-*
"*peradoes, criminals of high and low degree, and a legion of knaves,*
"*common cheats and swindlers.*" The better portion of the population were engaged in legitimate pursuits, and, by enterprise and industry, accumulated property and added to the wealth of the county; while the criminal element—which was unusually large—was "engaged
" in violating the laws, by numerous murders, robberies, larcenies, riots,
" and other breaches of the public peace, and by various other kinds
"of outrages against law, order, and public decency."

This condition of society existed in said county at the time of its re-organization and continued until the latter part of the year 1868, when the greater portion of the criminal element crossed into the county of Carter, and into the Territory of Utah. The services of a large number of peace officers and officers of justice, during that year, was necessary to preserve public order, protect persons and property, and give the whole community a fair degree of peace and sense of security. To do all this involved a great deal of necessary expense; and it is alleged in the bill that the county of Laramie incurred liabilities, for these purposes, prior to the organization of the counties of Albany and Carbon, amounting to nearly forty thousand dollars; and that during that time it received from all sources of revenue, only about the sum of twelve thousand dollars; leaving a debt upon the county of about twenty-eight thousand dollars.

According to the allegations of the bill—and they are to be taken as true—this indebtedness was incurred in the following manner and for the following purposes:

1. Police, court, and hospital expenses.
2. Salaries and mileage of officers.
3. Keeping and guarding prisoners.
4. Rent of offices.
5. Expenses incident to the county offices, such as fuel, lights, stationery, &c.

The bill also alleges that on the 18th day of December 1868, there was in said county of Laramie permanent property subject to taxation and legally and equitably liable to pay its indebtedness, to the amount and value of three millions of dollars. That on that date the Legislature carved out two new counties, Albany and Carbon, out of the west-

ern portion of Laramie county, reducing its limits by more than two-thirds, and withdrawing over two-thirds of the taxable wealth from Laramie county, and making no provision for the new counties paying any portion of the old twenty-eight thousand dollar indebtedness, but leaving the whole amount to be discharged by the *reduced county of*

Add after line thirty-four, page 29:

APPELLANT'S ASSIGNMENT OF

First. **That the Supreme Court of the Terri**
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The rule stated by the Supreme Court of the Territory is:

"Where a county has been divided by an act of a legislature, one "portion thereof retains the former name, county seat, county organiza- "tion, county buildings and all other county property; and the other

"various trades, artizans, engineers, merchants, traders and professional men, *outlaws of both sexes, convicted and unconvicted felons, desperadoes, criminals of high and low degree, and a legion of knaves, common cheats and swindlers.*" The better portion of the population were engaged in legitimate pursuits, and, by enterprise and industry, accumulated property and added to the wealth of the county; while the criminal element—which was unusually large—was "engaged in violating the laws, by numerous murders, robberies, larcenies, riots, and other breaches of the public peace, and by various other kinds of outrages against law, order, and public decency."

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Add after line thirty-four, page 29:

APPELLANT'S ASSIGNMENT OF ERROR.

First. That the Supreme Court of the Territory of Wyoming erred in affirming the judgment of the District Court below, sustaining the demurrers of the defendants, the Board of County Commissioners of the county of Albany, and the Board of County Commissioners of the county of Carbon, to the bill of complaint of the complainant, the Board of County Commissioners of the county of Laramie, and dismissing the said bill of complaint.

Second. That the Supreme Court of the Territory of Wyoming erred in rendering judgment against the appellant, the Board of County Commissioners of the county of Laramie.

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ern portion of Laramie county, reducing its limits by more than two-thirds, and withdrawing over two-thirds of the taxable wealth from Laramie county, and making no provision for the new counties paying any portion of the old twenty-eight thousand dollar indebtedness, but leaving the whole amount to be discharged by the *reduced county of Laramie*, which it has done; and in order to do so, has been obliged "for the three years last past (prior to the filing of the bill,) to assess, "levy and collect onerous and burdensome taxes on the wealth and prop-"erty of its citizens."

It is also stated in the bill that a very large portion of the arrests made in the county of Laramie in 1868, was in that part of it, afterwards created into the counties of Albany and Carbon; that often the persons arrested there, were held in custody for trial at the District Court, at great expense; that the sheriff and his deputies, and the constables of said county were very frequently required to go from the county seat (Cheyenne) to the western limit of said county, a distance of more than two hundred miles, to arrest violators of the laws, and to do other acts required of them by law; and the expenses of which amounted to thousands of dollars.

It is to compel the counties of Albany and Carbon to contribute their equitable share of this twenty-eight thousand dollars of indebtedness, incurred on behalf of all, and which the present county of Laramie has been obliged to pay, that this suit was begun, in the First Judicial District of Wyoming Territory, on the 31st of July, 1872.

To the bill of complaint the defendants demurred, on the ground that the facts stated in the bill did not entitle the complainant to a discovery, nor to the relief sought. On the 13th day of March 1873, the District Court sustained the demurrers, and an appeal was taken from its judgment to the Supreme Court of the Territory of Wyoming. On the hearing in this last named court, of the bill and the demurrers, at the July term, 1873, the judgment of the District Court was in all things affirmed; and, from this judgment of said Supreme Court of the Territory of Wyoming, the complainant and appellant appeals to the Supreme Court of the United States.

The rule stated by the Supreme Court of the Territory is:

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Notwithstanding the court say that this rule "appears to be well established," no reference is made to any recognized authority, where such a rule is laid down; nor is a single adjudicated case cited in support of the pretended rule.

In some of the States the division of counties and of towns, is regulated by statute, which provides that in case of division the old county shall retain the county buildings, and be liable for all county indebtedness. But the existence of a statute of this import in some individual States, does not establish a *rule of law* in States and Territories when no such statute exists. In some of the Western States the legislature. in the acts creating new counties out of the old one, provide in terms that the new counties shall be liable for their *pro rata* share of the old county indebtedness. (*vide Dubuque vs. Clayton Co.*, *3rd Green*, (*Iowa*,) 604). But it would not be wise to contend that an act of the Iowa Legislature might be seized upon as a precedent, and thereafter, that in the division of counties elsewhere, the new counties should be held liable, legally and equitably, for their *pro rata* share of the old county indebtedness, without any reference to the county buildings and other property of the county. Statute law is arbitrary; there seems to be natural justice in the view that in those counties and towns where public buildings have been erected at the public expense, that in case of division the debts must remain with the objects for which they were incurred. Nor is there anything repugnant to justice and reason in a statute that provides that the new counties formed from the body of an older one, shall be legally and equitably liable to pay their *pro rata* share of the old county indebtedness, where such indebtedness did not arise for public buildings or other property in a particular locality.

In this case, no part of the indebtedness incurred in 1868 was on account of the erection of public buildings at any place in the county. The bill *shows affirmatively*, for what purpose the indebtedness was incurred. The injustice complained of is that the present county of Laramie has been obliged to pay twenty-eight thousand dollars,

without having any county buildings or other property to show for it. If it had an equivalent in public buildings or other public property, for the fair proportion of this debt, which Albany and Carbon counties in justice ought to pay, its equities would disappear; but such is not the case.

A county is said to be a political organization, created by the State, (Territory) with geographical limits, for the purpose of administering civil affars. (*Dillon on Municipal Corporations*, 30). It was in administering the civil affairs of government that this debt was incurred. "The rule appears to be well established" that property must contribute towards the support of the government that gives it protection. (*2nd Kent's Com.* 331, 332, 333—*Cooley's Constitutional Limitations*, 495—*Morford vs. Unger*, *8th Iowa*, (*Clark*) 32).

"Every person is entitled to be protected in the enjoyment of his "property, not only from invasion of it from individuals, but from all "unequal and undue assessments on the part of government. It is not "sufficient that no tax or imposition can be imposed upon the citizens "but by their representatives in the Legislature; the citizens are "entitled to require that the Legislature itself shall cause all public tax-"ation to be fair and equal in proportion to the value of property, so "that no one class of individuals and no one species of property may "be unequally or unduly assessed." (*2nd Kent*, 331–332).

"The duty of the State (sovereign) and citizen (subject) are recip-"rocal; and *any person* who is protected in his *person* and *property* "may be compelled to pay for such protection. As taxes are to be "assessed for the sole purpose of supporting government, the propriety "of exacting them can not be questioned.

"The rule of public law, founded on principle which no govern-"ment can disregard, without violating the rights of citizens, is that "taxes shall be assessed in such manner that *all citizens* may pay their "*just quota* in proportion to the ability and *the advantage* they derive "from society." (*Vattel, Law Nations—Plunket Creek Township vs. Crawford—21st Penn. State*, 107).

"In the second place it is of the very essence of taxation that it "be equal and uniform. * * * * *

"Where the burthen is common there should be common contri-"butions to discharge it.

"Taxation is the equivalent for protection which the government

"affords to the persons and property of its citizens, and as all alike are "protected, so all alike should bear the burthen *in proportion* to the interests secured." (*Cooley* 495, *and vide Ib.* 488 *to* 504).

Although the foregoing references may not be directly in point, yet they show that protection to persons and property by a government is in turn to be repaid by taxation on property to discharge the debts incurred in its protection. The point contended for in this case is that the bill shows that the persons and property in that portion of Laramie county afterwards created into the counties of Albany and Carbon, did receive the protection of the county government, such as it was, during 1868, for which this debt was incurred, and that the cost of that protection, instead of being shifted by the effect of vicious legislation upon less than one-third of the property it protected, should be equitably felt and discharged by the whole.

It would have been better, no doubt, had the Legislature provided by law, that new counties, upon their formation out of the territory of older ones, should be liable for their *pro rata* portion of existing indebtedness after deducting the value of county buildings, &c., when any existed; or providing specially in the acts creating and organizing the counties of Albany and Carbon that each should pay its proportion of the then existing indebtedness of Laramie county, which had been incurred in protecting the persons and property of the citizens of the whole county before its division. There would then have been adequate remedy at law for complainant; but legislation on this point having been omitted, there is not an adequate remedy at law, and hence its appeal to the equity side of the courts.

The action of legislative bodies in providing by general or special law, that upon the creation of a new county out of a portion of an older one, the former shall pay its proportion of existing indebtedness, incurred for the common benefit and on behalf of the whole county, pre-supposes an equitable obligation resting on all parts of the county to pay its share of the indebtedness. For it is not the province of legislatures to directly create liabilities in the first instance, or make contracts between persons, natural or artificial; but to propose *how*—in what manner—*liabilities* may be incurred and discharged, and contracts entered into and enforced.

Therefore, if no equitable obligation existed previous to the creation and organization of new counties, it would not be competent for

the Legislature to create a liability on the part of the new county to pay a fixed sum to the older county.

If no equitable consideration existed, legislation of the kind supposed would be to compel the new counties to pay something for nothing. It may well be doubted whether such a liability could be imposed by the Legislature. It may not create a naked obligation in the manner supposed, any more more than it may discharge a party from an obligation he has incurred by contract. It may provide the manner in which obligations shall be incurred or discharged, but cannot directly impose or impair them.

The indebtedness in this case which was discharged by the present county of Laramie, and for which contribution is now sought to be enforced, was based on the credit of the whole county, and on its taxable wealth before the division: and but for the division made in creating the two counties of Albany and Carbon, the taxable wealth would justly have contributed its fair proportion towards paying the debt incurred in its protection. As Cooley and Kent maintain, "Prop-"erty must contribute towards the support of the government that "gives it protection." Surely this is but fair and equitable, as well as legal. "Where the burthen is common there should be common "contribution to discharge it." But was this done? No! Two-thirds of the territory of the old county of Laramie, and more than two-thirds of its wealth were withdrawn from it, and two new counties were created out of it, and the whole of the indebtedness, amounting to about twenty-eight thousand dollars, shifted upon what was left of Laramie county, which has since paid this indebtedness in full, and now seeks to compel an equitable contribution on the part of Albany and Carbon counties of what Laramie county was *legally* obliged to pay. As has already been stated, had the Legislature provided, at the time of creating those counties, that each should assume its proportion of the common burthen then existing, there would have been a legal liability formed out of the pre-existing equitable liability, which could have been enforced on the law side of the court; but as nothing was said about the indebtedness in the acts creating Albany and Carbon counties, those counties are equitably bound to contribute, each its fair proportion, to Laramie county, for discharging the whole burthen. They each have received the equivalent given by government for taxation, viz: "Protection to person and property," but have failed and

refused to bear their share of the common burthen in maintaining such government. Surely this is manifestly inequitable and unjust; and lame and inefficient must be the court, having equity powers, that is unwilling or refuses to compel fair dealing and honesty between artificial persons as well as natural. For we maintain that public corporations may be compelled to account to one another, and decreed to do what is just and right towards each other, as well as natural persons. (*See Welch vs St. Genevieve*, 1 *Dillon, C. C.* 130).

Perhaps it will be argued that this court will be justified in presuming, from the silence of the Legislature, that it intended to saddle the burthen of the whole debt upon what is now Laramie county. Presumptions are always raised in favor of reason, justice and right, and never in favor of injustice and wrong. It would be preposterous to presume that a legislative body intended by its enactments to perpetrate an injustice and a wrong upon citizens, or upon one of the political subdivisions of a state or territory, from the fact of its omission to enact in detail what, perhaps, ought to have been enacted. The better view in relation to the silence or omission of the legislative body is, that courts of equity will presume that the Legislature intended to do what in right and justice it should have done, and endeavor to effectuate this intention. Now apply this reasonable and just rule to the case under consideration and the acts of the Legislature relating thereto, and the duty of the court is plain. Say then, in the absence of definite utterance by the Legislature that its intention was to do what was right and just in the matter between these political divisions and the people who resided in them, and endeavor to give full effect to this intention, and justice will be done.

CONTRIBUTION.

Courts of equity will compel contribution when the duty to contribute arises from contract; when it arises from legal duty independent of contract; and when it arises from the principles of natural justice. (1 *Storey, Eq. Juris.* § 469; *Campbell vs. Mesier*, 4 *Johns, Ch. Rep.* 334).

Lord Chief Baron Erye said: "If we take a view of the "cases, both in law and in equity, we shall find that *contribution* is "bottomed and fixed on the *principles of natural justice.*" (*Deering vs. Earl of Winchelsea*, 1 *Cox's Cases*, 318; 2 *Bos. & Pull.* 270 *S. C.*).

The authorities maintain, that if "a man owning several acres of "land is bound in a judgment, or statute, or recognizance operating as "a lien on the land, and afterwards alienes one acre to A, another to "B, and another to C, &c.; then if one alienee is compelled, in order "to save his land, to pay the judgment, statute or recognizance, he "will be entitled to contribution from the other alienees." (1 *Storey, Eq. Juris.* 477, *and cases cited in note* 1).

In cases when sureties who are bound for the same principal, if one of them is obliged, by the default of the principal, to pay the money for which all were bound, equity will compel contribution from the others. And this too, because the claim for contribution has its foundation in the clearest principles of natural justice. All were equally bound to pay, if the principal made default, and by the payment all are relieved. No one should profit by another's loss, when he has incurred a like responsibility. He ought to bear the burthen who would reap the benefit. The morality of this doctrine ought not to be questioned.

Contribution lies between partners for any excess which one partner has paid on partnership account beyond his share. Also between joint tenants, tenants in common, and part owners of ships and other chattels, for all expenditures for the common benefit. Why may not the same principles of natural justice be applied to the present case; and the counties of Albany and Carbon be compelled to contribute each its just and equitable share of the common burthen, discharged by the present county of Laramie? An equitable basis can be readily reached by a comparison of the assessment-roll of the old county of Laramie in 1868, showing the value of the taxable property therein, with the assessment-rolls of the three counties in 1869, in which the same identical property is rated and assessed. The exact amount that Albany and Carbon counties should contribute may not be attainable, but can be approached so near and so equitably, that justice will be done. Courts of equity are possessed of the requisite flexibility to adapt themselves to the particular circumstances of each case before them. In this case, the difficulties pictured by the Supreme Court of Wyoming, in the opinion, are imaginary and outside of the facts stated in the bill. There is no statement in the bill that warranted the Court in declaring "that quite a portion of the original indebtedness had been paid by taxes assessed upon the *western* portion of

the former county of Laramie." If the *rule* stated by the court were correct, the opinion might, with propriety, have ended with its enunciation. The discussion of conjectural difficulties and possible equities, *dehors* the bill of complaint, by the opinion of that court, ought not influence this court to the prejudice of complainant's equities.

In *Lucas county vs. Hunt* (5 *Ohio St.* 496), the Supreme Court of the State of Ohio did not hesitate to enforce the principles of right and justice against a county.

The Circuit Court of the United Sates, in the case of *Welch vs. St. Genevieve* (1 *Dillon, Circuit Court Rep.* 130), held the municipality of St. Genevieve to a rigid moral account, and compelled it to do justice to the plaintiff, although, seemingly, the statutes of the State of Missouri operated to shield it from liability.

And in Pennsylvania, in the case of *Overseers of the Poor vs. Whitehall* (2 *Sergt. & Rawle* 117), the Supreme Court held that contribution should be made by the town of North Whitehall to the town of South Whitehall, for a debt incurred by the town of Whitehall in maintaining a pauper, prior to its division into the town of North Whitehall and the town of South Whitehall.

THE RULE LAID DOWN BY THE SUPREME COURT OF THE TERRITORY OF WYOMING:

All rules should have their reason; and if the reason ceases the rule should cease also. The rule stated says, that, independent of legislation, no suit for contribution may be maintained by a portion of a former county, against a new county or counties formed from its territory and absorbing a part of its taxable wealth, for indebtedness existing on account of the whole at the date of division. The old county retains the county name, county organization, county buildings and county property, and must pay the debts. But suppose (as in the present case) there were no county buildings or county property to be retained, what value has the rule for counties like complainant? Will not such a rule, if enforced, work rank injustice, and compel the payment of something for nothing? It really amounts to recognizing the right to shift obligations from a whole political division upon any of its parts, whenever the Legislature sees proper to subdivide it, without the part receiving any benefit in return.

Suppose the Legislature of Dakota, on the 18th day of December, 1868, while engaged in fashioning *new counties* out of Laramie county,

had not stopped at creating the counties of Albany and Carbon, but had created a *new* county out of the remaining portion of Laramie county (the present county of Laramie), and called it by some other name; to whom would the creditors of the old county of Laramie look for payment of its debts? The old English rule, that the dissolution of a corporation pays its obligations, has not met with much favor in the courts of the United States. I am strongly inclined to believe that creditors, in the case supposed, would be protected by the courts, and payment of their claims enforced against either or all of the new counties; and if either one was obliged to pay the debt, it ought to be able to maintain contribution against the others.

If the Legislature by its silence and omission, may shift the public pecuniary obligations from the whole of a county upon one-third or less, of the whole, without any corresponding benefits being conferred, then certainly we have pointed out to us "a new way to pay old debts." For instance: All the counties in Wyoming Territory are four degrees in length, from north to south. One of these counties being in debt, having no public buildings—as is the case with some of them, have only to apply to the next Legislature to organize a new county out of the southern half of the old one. The Legislature need make no provision for the payment of the debt existing against the old county, in the act organizing the new one, but remain silent on that subject, and the debt is shifted upon the remaining portion of the old county which retains the name, when there is not a dollar of taxable wealth and no inhabitants within its limits, except roaming savages. The rule states too much; for if pursued to its logical conclusion, it will result in injustice and wrong to some one.

It also seems to me that the "rule" laid down, is against public policy. The building up of new communities is always attended with trouble, privation, and expense; and no one community should be saddled with the debts of another, without being benefited, in some way, in return. Upon the organization of new counties, in a country like Wyoming, it must be officered by men, often without experience, and sometimes without the requisite economy. But society must be established; the wheels of government set in motion; and life and property protected. The county is started without a fund, or even credit of any kind; and for some time its affairs have to be managed as best they can. In nearly every case the expenditures exceed the revenues.

Even in counties favored with the most orderly and law-abiding inhabitants, the end of its first fiscal year will find the debtor side of its ledger the largest, and that too without the cost of erecting public buildings. The debt must be met and paid; and no dexterous shifting of the obligation by equivocal legislation ought to be countenanced by the court, on the score of public policy, any more than attempts at repudiation.

The complainant, confidently relying on the equities of the bill, expects a reversal of the judgment appealed from.

DANIEL McLAUGHLIN,

Solicitor for complainant.

CHEYENNE, WYOMING TERRITORY, January 1874.

W. R. Steele

of Counsel

In the Supreme Court of the United States.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LARAMIE,
Complainant.

vs.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ALBANY, AND THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CARBON, } *Defendants.*

IN CHANCERY:

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF WYOMING.

BRIEF AND ARGUMENT OF DEFENDANTS.

CHARLES W. BRAMEL,
W. W. CORLETT, } Solicitors for Defendants.

1874.

STATEMENT OF CASE.

The essential facts of the bill of complaint are:

1. That on the 3d day of January, 1868, the county of Laramie, complainant in this case, was reorganized by an act of the Legislature of Dakota Territory, said county at that time comprising all the territory now included in the three counties of Laramie, Albany and Carbon.

2. That the counties of Albany and Carbon were, by Legislative acts, organized out of the western portion of Laramie county, on the 16th day of December, 1868.

3. That from the 3d day of January, 1868, to December 16th, 1868, while the county of Laramie, as originally reorganized, was in existence, extensive improvements, settlements, etc., took place in the county, and at the last named date, the total value of property, nearly all of a permanent character, in the county, was at least three millions of dollars.

4. That during the period last named, the county of Laramie incurred debts to the amount of $28,000, or thereabouts, over and above its revenue.

5. That said indebtedness was necessarily created by Laramie county for the common benefit of all the persons and property ~~there~~ being or situated in the original county of Laramie.

6. That the county of Laramie, as it remained after the counties of Carbon and Albany had been carved out of it by Legislative act, paid all of the said indebtedness of $28,000, incurred as aforesaid, before this action.

7. That the counties of Carbon and Albany, defendants herein, have refused to reimburse the county of Laramie for any portion of the $28,000 so paid by Laramie county.

8. That in the acts creating said counties of Albany and Carbon, no provisions were made by which they should assume any portion of the then existing indebtedness of Laramie county, although by said acts two thirds of the wealth and taxable property existing in said county of Laramie, were thus withdrawn from its jurisdiction and geographical limits.

Thereupon the bill of complaint prays for discovery as to divers matters, and for relief by the taking of an account between complainant and defendants, and "that the proportion of the debt and liabilities incurred by complainant in 1868, which each of said counties (Albany and Carbon) should

fairly and equitably pay, may be fixed and determined by this court, and that the amount which each of said defendants shall pay to your orator, may be adjudged by your honor." The bill also prays for such orders, decrees and process, as may be necessary to enforce the payment of such sum as may be adjudged to be due from defendants to complainant, and for general relief.

There were also multifarious allegations in the bill embracing legal conclusions of law as to the defendants' liability, and the extent of that liability, and also irrelevant matters of fact, which it is not deemed necessary to refer to.

To this bill of complaint, each of the defendants interposed demurrers, alleging thereby, that the complainant had not in its bill, stated a case entitling it to any such discovery or relief against the defendants as the bill sought and prayed for.

These demurrers were sustained by the district court of Wyoming Territory, in which the suit was brought, and the bill dismissed on the 13th day of March, 1873; and thereafter on the 21st day of July, 1873, the judgement of said district court, was, in all things, affirmed by the Supreme Court of Wyoming Territory. To reverse the judgement of the said Supreme Court of Wyoming, this appeal is prosecuted to the Supreme Court of the United States.

ARGUMENT FOR DEFENDANTS.

The appellent seeks to reverse the decision of the Supreme Court of Wyoming, and to sustain the action as originally instituted in the District Court, not by a reference to any adjudicated cases wherein the question here presented was either directly or indirectly involved, but by a reference to some general principles and maxims of equity jurisprudence, from which, by a special and involved kind of reasoning an illegitimate conclusion is sought to be drawn favorable to the theory of the complainant.

The argument for the complainant, summarized, may be conveniently presented as basing the right of the complainant to maintain the suit upon three grounds:

1. By a reference to the general subject of taxation, and the theoretical limitations upon the Legislative power in imposing the burden of taxation.

2. By an application to the present case of the maxim that "he who derives the benefit ought to sustain the burden."

3. Upon the principle upon which *contribution* is enforced in equity upon the taking of an account.

It is admitted in the argument for the complainant, that the references to authority are not directly in point, and it is now submitted that when tested in the light of actual adjudications and universal practice, they are wholly irrelevant to the question at bar. To illustrate, liberal quotations are given in the argument from Kent's Commentaries, Cooley's constitutional Limitations, and Vattel's Law of Nations to show that "property must contribute towards the support of the government that gives it protection," that "taxation must be equal and uniform," and that "*all citizens* must pay their

just quota in proportion to the ability and the advantages they derive from society." In undertaking to apply these very general maxims to the case at bar, it is assumed that these principles are violated unless the defendants in this case are compelled to contribute, and that the application of these maxims are questions for the *courts* and not for the *Legislature*. A decisive answer may be given to this portion of the complainant's argument by simply saying that if the question of legal or equitable responsibility in cases of this kind is *judicial* in its nature, then it is wholly beyond and without the jurisdiction of the Legislature or political power. And yet it is conceded that when the Legislature divides a county or other public corporation, it may by express provision determine what kind of a division shall be made of the public property of the corporation, and in like manner prescribe the proportion of any pre-existing debts which each divided portion shall pay. Now if that is a judicial and not a legislative question, it is respectfully submitted that the Legislature could exercise no authority in the matter whatever—at least none which would be binding upon the courts so as not to be the subject of review by the courts. Yet the authorities are unanimous and conclude that the whole matter is a proper subject of legislative or political discretion *and not judicially* reviewable. See Dillon on municipal corporations (1st edition) Sec's 587, 588. People vs Mayor &c., of Brooklyn, 4 N. Y. (4 Comst.) 419. Brewster vs Syracuse 19 N. Y. 116. Sun Insurance Company vs the Mayor &c., 8 N. Y. 241, 251. Town of Guilford vs Supervisors &c. 13 N. Y. (3 Kern) 143. Litchfield vs Barnum, 41 N. Y. 123. Scoville vs Cleveland, 1 Ohio State 127, 135. Pauw vs New Albany 22. Ind. 204. Shaw vs Dennis 5 Gilm. (Ills.) 416. Philadelphia vs Field 58 Pa. St. 320. Shelby county vs Railroad company 5 Bush (Ky.) 225. Darlington vs Mayor &c., 31 N. Y. 164. Reynolds vs Stark county 5 Ohio 204; 5 Ohio State 113. Clinton vs Railroad company 24 Iowa 455; Louisville University of Louisville 15 B. Munroe 642. Dillon on Municipal Corporations (1st edition) sections 43, 44, 45, 46, 47.

The deductions sought to be drawn from a consideration of the general maxims as to the exercise of the taxing power, are dissipated and shown to be irrelevant by simply referring to the fact that in many of the States of the Union the Legislatures have exempted church property and the property of various eleemosynary institutions from taxation.

Up to this time the right of the Legislatures to make such exemptions has scarcely been questioned, certainly not subject to judicial criticism or review. Indeed, the whole taxing system of the Federal Government is a most pertinent and conclusive illustration of the fact that the question as to how the burdens of taxation shall be borne, is exclusively political and legislative, except so far as the question is controlled by the express terms of the constitution. Of course it is conceded that the question may be controlled in the respective States of the Union by their constitutions. "The supremacy of the legislative authority over municipal corporations is not, however, in all respects unlimited; but the limitation must be sought either in the national or State constitution, and if not there found, in terms, or by fair implication,

they do not exist." Dillon on Municipal Corporations (1st edition) sec. 38.

In the case at bar, as the division of the original county of Laramie, as alleged in the bill, was made by the Legislature of Dakota Territory, the only limitations upon the power of that Legislature must be found in the constitution and laws of the United States. It will be shown hereafter that the provision of the national constitution prohibiting the States from passing laws impairing the obligation of contract, has no application to the question here involved. No law of the United States limiting the authority of the Legislature of Dakota upon this subject has been, or can be cited. While on the other hand, Congress, in organizing said Territory, provided in express terms "that the legislative power of the Territory shall extend to all rightful subjects of legislation consistant with the constitution of the United States and the provisions of this act." Act of Congress approved March 2, 1861, entitled "An act to provide a temporary government for the Territory of Dakota, and to create the office of Surveyor General therein."

The remaining two grounds on which the argument is based, may be considered together, as the right to contribution in equity, upon the taking of an account, is based upon an application of the maxim that "he who derives the benefit must sustain the burden."

Contribution in equity is defined thus: "If the liabilities of two or more persons be joint, he who has paid more than his share, is entitled to *contribution* from the rest. If some are liable in priority to the rest, the parties secondarily liable, if compelled to discharge the claim, are entitled to exoneration." Willard's Equity Jurisprudence, page 106. Adam's Equity 267, 495.

In the present case the obligations arising out of the indebtedness of $28,000, were never a *joint* obligation of the counties of Laramie, Albany and Carbon. That obligation was, when incurred, the *sole* indebtedness of the public corporation of the county of Laramie, the complainant, and always remained such. The public corporations known as the defendants herein, had no existence when the debt was created. It was and is simply a case where the legislature, after said debt was incurred, created and organized the defendants out of portions of the former territory of the complainant, *and in the exercise of its discretion did not require the defendants to pay any portion of said debt.*

It will not do to assume even that such discretion was unwisely exercised, for the Legislature may well and justly have considered that the expenses attendant upon new organizations of counties, and other difficulties and embarrassments incident to the local condition of the defendants and their populations, would be a sufficient and ample consideration for exonerating them from the payment of the debt incurred while they were a part of the county of Laramie. The bill of complaint very opportunely mentions some of these considerations in its historical account of the migrations of the lawless tribes of criminals westward with "the star of empire" *out of* the new county of Laramie and *into* the counties of Carbon and Albany, thus subjecting the latter to all of the additional expense occasioned by the presence of these dangerous classes, who occasion a large portion of the expenses

of government. These suggestions of the bill in themselves furnish a most satisfactory reason why questions of the kind involved in this case should properly be considered legislative and not judicial. The argument for complainant admits, at least by implication, that if the said indebtedness of $28,000, or any part of it, had been incurred on account of the erection of public buildings or other permanent improvements, retained by the complainant upon the division of the county, then it would have been competent for the Legislature to have provided that the complainant should pay the whole of said debt. But this assumption is suicidal to the whole course of the balance of complainant's reasoning, which proceeds upon the hypothesis that the *liabilities* of the whole county, before the divisions, were fixed by law as soon as incurred, and the *rights* in the case, *vested* rights, which the Legislature could not disturb or change.

The whole fabric of complainant's argument is grounded upon this principle alleged to be fundamental. And yet if this be so, the Legislature, in dividing a county, could make no division and apportionment of the common property and debts whatever, unless indeed it made precisely the same division and apportionment that a court of equity would decree, after a hearing in the case and the taking of an account. Thus it is that the broad assumptions of the complainant, in its argument, are, as it were, unconsciously admitted away. It is admitted by the defendants herein, that in this case there is no remedy for the complainant at law; but it is not admitted, nor does it follow that there is therefore a remedy in equity. And yet this point, not admitted, is not very adroitly assumed in the printed argument of complainant, on the 32nd page, where this language is employed: "It would have been better, no doubt, had the Legislature provided by law * * * in the acts creating and organizing the counties of Albany and Carbon, that each should pay its proportion of the then existing indebtedness of Laramie county, which had been incurred in protecting the persons and property of the citizens of the whole country, before the division. There would then have been adequate remedy at law for complainant, but legislation on this point having been omitted, there is not an adequate remedy at law, and hence its appeal to the equity side of the courts." But how do these results follow in consequence of what is here stated? If, without any legislation, there was imposed upon the new counties carved out of the old one, an equitable obligation to pay a *pro rata* share of the pre-existing debt, how could the Legislature by simply reaffirming that obligation, give it any vital force which it did not possess before, or how could the Legislature by such an act transfer the jurisdiction in the case from a court of equity to a court of law? As it is well known, contribution may be enforced at law as well as in equity, and the jurisdiction in equity is not sustained, simply because there is no remedy at law, but because in many cases the remedy at law is not completely adequate.

The argument of the complainant confounds *moral* with *equitable* obligations. Now it is within the scope of legislative power to provide that many merely moral obligations resting on public corporations, shall be met and discharged, notwithstanding such obligations could be enforced neither at law

nor in equity. "The fact that a claim against a municipal or public corporation is such an one as the law recognizes as of *legal obligation*, has been decided to form no constitutional objection to the validity of a law imposing a tax and directing its payment." Dillon on Municipal Corporations (1st edition) sec. 44; Guilford vs Supervisors &c., 13 N. Y. (3 Kerns) 143; Brewster vs Syracuse 19 N. Y. 116.

"The cases go no further, probably, than to assert the doctrine that it is competent for the Legislature to compel municipal corporations to recognize and pay debts not binding in law, *and which for technical reasons could not be enforced in equity*, but which, nevertheless, are just and equitable in their character and involve a moral obligation." Dillon on Municipal Corporations (1st edition) sec. 44; Blonding vs Burr, 13 Cal., 343; Lycaning vs Union, 15 Pa. St., 166; Thomas vs Leland, 24, Wend, 65; Hasbrauck vs Milwaukee, 21 Wis. 217. Smith vs Morse, 2 Cal. 524; Grogan vs San Francisco, 18 Cal. 590; Burns vs Clarion county, 62 Pa. St. 422.

The foregoing authorities show very clearly why the Legislature in many of the States take the precaution to expressly provide when dividing a county that the new county or division formed from an older one, should pay a portion of old debts—that reason being that without legislative provision to that effect, no remedy would exist either in law or equity. In other words without such provision the obligation of the new county or other municipal division, would be merely moral or resting in gratitude, as contradistinguished from an equitable one to be enforced in chancery. In view of the authorities above cited, the averment found upon pages 32-3 of the argument for complainant that "if no equitable obligation existed previous to the creation and organization of new counties, it would not be competent for the Legislature to create a liability on the part of the new county to pay a fixed sum to the older county," is not a little remarkable.

Again, the argument for the complainant insists that it can not be assumed or presumed from the silence of the Legislature that it intended to saddle the burden of the whole debt of $28,000 upon what is now the county of Laramie, and the argument is pushed to the extent of asserting that such a presumption would be contrary to natural justice, whereas the presumption should always be raised in favor of reason, justice and right. Without stopping to controvert the averment that such a presumption would be "preposterous," and would uphold wrong and injustice, it will suffice to say that fortunately we are not obliged to rely upon any "presumption" whatever to solve the question of the legislative intention in a case where no provision is made for the payment of the debts of a county when a new county is organized out of a portion of its territory.

The judicial authorities, it is believed, are uniform as to the equitable and legal consequences flowing from such legislative omission.

"On the *division* of a town or public corporation possessing corporate property, into two separate towns or communities, *each* in the absence of a different provision by the Legislature, was considered by the Supreme Court of New York to be *entitled to hold* in severalty, the *public property* which

fell within its limits." In Connecticut, it is declared to be "well settled that when part of the inhabitants and territory of an older town are erected into a new corporation, the old town retains all the property, rights and privileges formerly belonging to it, and is subject to all its former duties and liabilities, at least as it regards property, which has no fixed location in the new town, as lands, building, &c.," accordingly "upon the division of Hartford, no part of the ferry franchise, would pass to the new town of East Hartford, except by virtue of a legal provision to that effect." So in Massachusetts, it has been held that if a new corporation is created out of a part of the territory of an old corporation, or if part of its territory and inhabitants is annexed to another corporation, unless some provision is made in the act respecting the property and existing liabilities of the corporation, the latter will be entitled to all the property and be solely answerable for all the liabilities." Dillon on Municipal Corporations (1st edition) section 128; North Hempstead vs Hempsted 2, Wendell 108, Hartford Bridge vs East Hartford 16 Conn. 149, 171, affirmed by Supreme Court of the United States 10, How, (U. S.) 511, 541; Windham vs Portland 4, Mass. 384; Richards vs Daggett, 4 Mass. 539; Hampshire vs Franklin 16, Mass. 76; Richland County vs Lawrence, 12 Ill. 1; Blackstone vs Taft 4, Gray 250; North Yarmouth vs Skillings 45, Maine, 133, 142; Cobb vs Kingman 15 Mass. 197; Minat vs Curtis, 7, Mass. 441, 445; Opinion of Supreme Judges 6, Cush. 575.

In many of the foregoing cases, the question involved in this case was directly presented and the opinion unequivocally expressed in accordance with the above quotation from Dillon on Municipal Corporations. It is believed that there are no authorities the other way upon the question. An examination of the authorities cited in the argument, shows not a *single case* where the question here involved was presented for decision. In one case among those cited by complainant, is the opinion expressed that the right to contribution exists in a case like the present. The case wherein that opinion is expressed is that of Plunkett Township vs Crawford 27, Pa. State 107, but a reference to the case shows that the point did not arise in the case, and the expression which is found in that case, and relied on, is therefore a mere *dictum*. The facts in that case were, that a judgement had been obtained against a *township*. After judgement was obtained an application was made to the court to revive the judgement against one of the townships into which the old township had been divided between the time the judgement was obtained and the time the application was made to revive it. The application was made upon an agreement submitting to the court the single question as to whether the judgment should be revived at all against the township, and if so, whether for the whole or only for a portion of the same. The court decided that judgment should have been entered against the township for the whole amount thereof, (which was all it was called to pass upon) and then proceeded to say that if it paid the whole amount it laid a claim for contribution, (an expression of opinion on a point not argued nor involved in the case.)

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nor in equity. "The fact that a claim against a municipal or public corporation is such an one as the law recognizes as of *legal obligation*, has been decided to form no constitutional objection to the validity of a law imposing a tax and directing its payment." Dillon on Municipal Corporations (1st edition) sec. 44; Guilford vs Supervisors &c., 13 N. Y. (3 Kerns) 143; Brewster vs Syracuse 19 N. Y. 116.

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"On the *division* of a town or public corporation possessing corporate property, into two separate towns or communities, *each* in the absence of a different provision by the Legislature, was considered by the Supreme Court of New York to be *entitled to hold* in severalty, the *public property* which

fell within its limits." In Connecticut, it is declared to be "well settled that when part of the inhabitants and territory of an older town are erected into a new corporation, the old town retains all the property, rights and privileges formerly belonging to it, and is subject to all its former duties and liabilities, at least as it regards property, which has no fixed location in the new town, as lands, building, &c.," accordingly "upon the division of Hartford, no part of the ferry franchise, would pass to the new town of East Hartford, except by virtue of a legal provision to that effect." So in Massachusetts, it has been held that if a new corporation is created out of a part of the territory of an old corporation, or if part of its territory and inhabitants is annexed to another corporation, unless some provision is made in the act respecting the property and existing liabilities of the corporation, the latter will be entitled to all the property and be solely answerable for all the liabilities." Dillon on Municipal Corporations (1st edition) section 128; North Hempstead vs Hempsted 2, Wendell 108, Hartford Bridge vs East Hartford 16 Conn. 149, 171, affirmed by Supreme Court of the United States 10, How, (U. S.) 511, 541; Windham vs Portland 4, Mass. 384; Richards vs Daggett, 4 Mass. 539; Hampshire vs Franklin 16, Mass. 76; Richland County vs. Lawrence, 12 Ill. 1; Blackstone vs Taft 4, Gray 250; North Yarmouth vs Skillings 45, Maine, 133, 142; Cobb vs Kingman 15 Mass. 197; Minat vs Curtis, 7, Mass. 441, 445; Opinion of Supreme Judges 6, Cush. 575.

In many of the foregoing cases, the question involved in this case was directly presented and the opinion unequivocally expressed in accordance with the above quotation from Dillon on Municipal Corporations. It is believed that there are no authorities the other way upon the question. An examination of the authorities cited in the argument, shows not a *single case* where the question here involved was presented for decision. In one case among those cited by complainant, is the opinion expressed that the right to contribution exists in a case like the present. The case wherein that opinion is expressed is that of Plunkett Township vs Crawford 27, Pa. State 107, but a reference to the case shows that the point did not arise in the case, and the expression which is found in that case, and relied on, is therefore a mere *dictum*. The facts in that case were, that a judgement had been obtained against a *township*. After judgement was obtained an application was made to the court to revive the judgement against one of the townships into which the old township had been divided between the time the judgement was obtained and the time the application was made to revive it. The application was made upon an agreement submitting to the court the single question as to whether the judgment should be revived at all against the township, and if so, whether for the whole or only for a portion of the same. The court decided that judgment should have been entered against the township for the whole amount thereof, (which was all it was called to pass upon) and then proceeded to say that if it paid the whole amount it laid a claim for contribution, (an expression of opinion on a point not argued nor involved in the case.)

The very indirect, and, to say the least of it, specious character of

reasoning by which this action on the part of the complainant for contribution is sought to be sustained, is well illustrated in that portion of the complainant's argument, wherein it is alleged—not that the rights of creditors of the old county of Laramie *have been denied or impaired* so far as the collection of their claims is concerned—but that if contribution is not enforced by the courts in such cases as these, the rights of creditors in similar cases *may be denied* or jeopardized by stupid and vicious legislation.

In answer to this it is but necessary to say that in the case at bar no question as to the rights of the creditors of the old county of Laramie is presented for consideration, nor is the court in any way asked to protect them. The complainant in this case has precluded itself from urging the constitutional rights of creditors to be protected from any impairment of the obligations of their contracts with the county of Laramie, by alleging in its bill of complaint that at the commencement of this action it *had paid the entire indebtedness existing at the time the counties of Carbon and Albany were organized.* Undoubtedly if the *creditors* of the old county of Laramie could present a case to the courts for relief, showing that by reason of the action of the Legislature in dividing the county the obligation of their contracts with the county had been impaired, the courts would afford relief. But if the *creditors* do not complain or seek relief against such legislation, can any one else do so? It may well be doubted if in a case like the one at bar, where ample means were left in the old county to protect the rights of creditors—as is shown by the fact that they have already been paid in full—even the creditors could complain or put themselves in a position to ask relief from the legislative action.

The suppositious cases imagined in the argument for the complainant, of the Legislature's acting so unwisely as by its action in dividing counties to defraud creditors out of their rights, furnish no reason upon which the judgment of the Supreme Court in this case can or ought to be reversed. The *case at bar* is not one of the kind imagined; and the party seeking relief in this case is not a *creditor* whose constitutional or legal rights have been involved or abridged.

In this connection it may be well to advert to the peculiar character of public corporations as distinguished from private corporations or persons; and the practically unlimited control which the Legislature has over public corporations and their funds, revenues and public property, in the light of judicial authority: "Not only may the Legislature originally fix the limits of the corporation, but *it may subsequently annex,* or authorize the annexation of, contiguous or other territory, and this without the consent, and even against the remonstrance of the majority of the persons residing in the corporation or in the annexed territory. And it is no constitutional objection to the exercise of this power of compulsory annexation that the property thus brought within the corporate limits will be subject to taxation to discharge a pre-existing municipal indebtedness, since this is a matter which, in the absence of special constitutional restrictions, belongs wholly to the Legislature to determine."—Dillon on Municipal

Corporations (1st edition) section 126. As illustrating and enforcing the doctrine above announced, see Blanchard vs Bissell, 11 Ohio St. 96; Powers vs Wood County, 8 Ohio State 285; Layton vs New Orleans, 12 La. An. 515; Arnoult vs New Orleans, 11 La., An. 54; Cheary vs Hooser, 9 B. Munroe 330; Govhuen vs Springfield, 21 Maine 59; Cooley's Constitutional Limitations, page 231 et. seq.

Again, in speaking of this question, Judge Cooley, in his work on Constitutional Limitations, on pp. 192-3, uses the following expressive language: "The rights and franchise of such a corporation" (municipal) "being granted for the purposes of government, can never become such vested rights as against the State, that they cannot be taken away; nor do the charter constitute a contract in the sense of the constitutional provision which prohibits the obligation of contracts being violated. Restraints on the legislative power of control must be found in the constitution of the State, or they must rest alone in the legislative discretion. If the legislative action in these cases operates injuriously to individuals the remedy is not with the courts. They have no power to interfere, and the people must be looked to to right, through the ballot box, all these wrongs."

The same author, on page 488 of the same work, in treating of the power of taxation, uses the following language, to indicate the unlimited discretion resting with the Legislature in fixing the burdens to be borne by the people: "It must always be conceded that the proper authority to determine what should, and what should not, properly constitute a public burden, is the legislative department of the State. This is not only true for the State at large but it is true also in respect to each municipality or political division of the State; these inferior corporate existences having only such authority in this regard as the Legislature shall confer upon them." * * * * * "There will, therefore, be necessary expenditures, and expenditures which rest upon considerations of public policy alone; and in regard to the one as much as the other the decision of that department to which alone questions of State policy are addressed must be accepted as conclusive." If the foregoing authorities and quotations correctly state the law, then it is manifest that public corporations, such as counties, as to their existence, power, authority and the disposition of their public property, in the absence of special constitutional restriction, are completely under legislative control; and that the legislative discretion exercised in connection with that control is not subject to judicial review. If that discretion is exercised oppressively, the remedy is at the ballot box, where, under our form of government, theoretically at least, a remedy may be found for all political wrongs.

The argument for the complainant admits that "the exact amount that Albany and Carbon Counties should contribute may not be attainable, but can be approached so near and so equitably that justice will be done."

Now, if there is any liability to contribute in this case, that liability and the basis of it is fixed by law; and when the basis of liability is fixed by the court, nothing but a defect in the proofs can preclude the court from discovering the exact amount. But what shall the basis upon which the account,

should be taken be? Shall it simply be the proportion of the indebtedness of $28,000. which the property in the counties of Albany and Carbon respectively bore to the whole amount of property in the three counties at the time of the division? or shall it be such a proportion of the said sum of $28,000 as was incurred in protecting life and property in the counties of Albany and Carbon respectively? These questions at once suggest the propriety of relegating the whole question to the people represented in the Legislature, as one purely of public policy.

CONCLUSION.

The foregoing views may be briefly summarized as follows:

1. That the action of the legislative authority of Dakota Territory, in creating and organizing the counties of Albany and Carbon out of the territory and inhabitants of the original county of Laramie, was a proper exercise of legislatlve authority over a rightful subject of legislation.

2. That when the Legislature of Dakota created and organized the said counties of Albany and Carbon out of portions of the former county of Laramie, the latter, by the unanimous voice of judicial decision, retained all the public property of the corporation, and remained solely liable for its debts.

3. The last proposition being the law of the land at the time the statutes organizing the counties of Albany and Carbon were passed, the legislative intent as to the question of paying the then existing debts is to be deduced therefrom, and the Legislature not having directed that the defendants should pay any portion of those debts, it must have intended that they should be discharged by the complainant.

4. That public corporations and their public proyerty, funds and revenues, are under the control of the Legislature.

5. That in the selection of the objects of taxation, and determining the amount of the burden which shall be borne respectively by particular districts, and in determining the use to which public revenues shall be applied, (provided the use be a public one) the Legislature is supreme, and its determinations not subject to judicial revision.

6. That so far as the taxing power enters into a consideration of this case, it does not appear that the Legislature has in any respect stepped without its jurisdiction.

7. That as the bill alledges that all creditirs have been paid in full, it does not appear that the legislation by which the defendant counties were created, in any wise impaired their contracts; but if even such were the case, the complaint must come from the creditors instead of the debtor.

8. That the complainant in this case has failed to bring itself within any rule upon which contribution in equity is enforced—that the analogies cited by complainant's argument are irrelevant, and overborne by direct judicial authority, and by a reference to the extent of legislative control over public corporations and their public property.

9. That in cases of this kind no proper basis can be fixed upon which an account could be taken, and no judicial determination made as to the amounts

which the defendants ought respectively contribute; the considerations by which the law-making power should be influenced in apportioning the property and debts in such cases as this, being those of public policy and not of judicial accuracy—from whence it is evident that the whole question here presented is exclusively political or legislative.

10. That no authorities have been cited where discovery and relief have ever been awarded by a court of equity in a case of this nature, except where the same were authorized by positive statute.

For the foregoing and other reasons which may suggest themselves to the court, it is respectfully submitted that the decree and judgment appealed from, in this case, ought to be affirmed.

CHARLES W. BRAMEL,
Solicitor for Defendants.

W. W. CORLETT,
Of. Counsel.

which the defendants could respectively contribute: the considerations by which the law-making power should be influenced in apportioning the property and debts in such cases as this, being those of public policy and not of judicial economy—from whence it is evident that the whole question here presented is exclusively political or legislative.

10. That no authorities have been cited where discovery and relief have ever been awarded by a court of equity in a case of this nature, except where the same were authorized by positive statute.

For the foregoing and other reasons which may suggest themselves to the court, it is respectfully submitted that the decree and judgment appealed from, in this case, ought to be affirmed.

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